

179
No. 2681

United States
Circuit Court of Appeals
For the Ninth Circuit.

FREDERICK EGGERS, as Sheriff of the City
and County of San Francisco, California,
SOPHIE SUTER, SOPHIE SUTER, as
Executrix of the Will of DANIEL SUTER,
Deceased, and OTTO tum SUDEN,
Appellants,

vs.

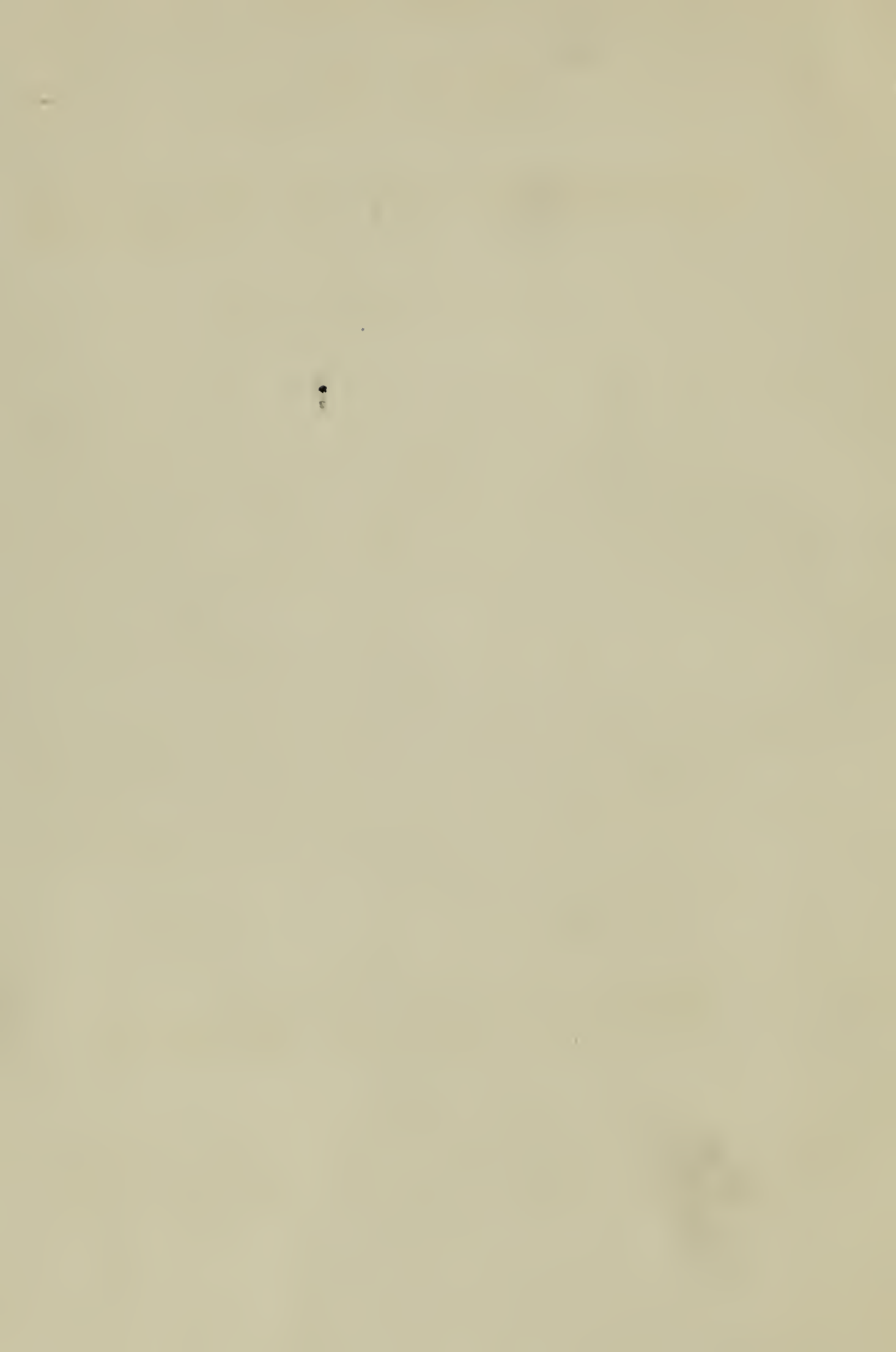
AUGUST FERDINAND KRUEGER (Otherwise
KRUGER), Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise
KRUGER), Deceased,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Second Division.

Filed

DEC 7 - 1915



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INDEX TO THE PRINTED TRANSCRIPT OF
RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern
District of the State of California, Second Di-
vision.*

IN EQUITY.

AUGUST FERDINAND KRUEGER (Otherwise
KRUGER), as Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise
KRUGER), Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and
County of San Francisco, California; SO-
PHIE SUTER, as Executrix of the Will of
DANIEL SUTER, Deceased; SOPHIE
SUTER, OTTO tum SUDEN, EDWARD C.
HARRISON and MAURICE E. HARRI-
SON,

Defendants.

Complaint.

To the Hon. the Judges of the District Court of the
United States in and for the Northern District
of California.

Plaintiff complains of defendants and for cause of
complaint alleges;

I.

That plaintiff is, and always has been, a citizen of
the Republic of Switzerland, though for more than fif-
teen years past and immediately prior to the filing of
this complaint, plaintiff has resided in the City and
County of San Francisco, State of California, such
residence in said city, county and state being con-
tinuous.

II.

That Anna Maria Krueger (otherwise Kruger), deceased, hereinafter referred to as Anna Maria Krueger, was, at the time of her death, a citizen of the Republic of Switzerland, though, she had resided, for many years, prior to her death, in the City and County of San Francisco, State of California, and, during her lifetime, while living in said city, county and state, resided with plaintiff, on the real property hereinafter described.

III.

That, said Anna Maria Krueger, deceased, was, at the time of [1*] her death, and for many years prior thereto, the owner of, and in the possession of, in fee simple absolute, of all that certain piece of real estate, situated in the City and County of San Francisco, State of California, particularly described as follows, to wit:

Beginning at a point on the westerly line of Ninth Avenue, distant thereon 100 feet southerly from the southerly line of Clement street; running thence southerly along said westerly line of Ninth Avenue 75 feet; thence at right angles westerly 100 feet; thence at right angles northerly 25 feet; thence at right angles westerly 120 feet to a point in the easterly line of Tenth Avenue; thence northerly along said easterly line of Tenth Avenue 50 feet; thence at a right angle easterly 182 feet and 6 inches; thence at a right angle northerly 100 feet to a point in the southerly line of Clement street; thence easterly along said southerly line of Clement street 25 feet;

*Page number appearing at foot of page of original certified Record.

thence at right angles southerly 100 feet; and thence at a right angle easterly 32 feet and 6 inches to said westerly line of Ninth Avenue and point of commencement.

Being part of Outside Land, Block 190, together with the improvements thereon and their appurtenances.

IV.

That, during her lifetime, said Anna Maria Krueger, deceased, became indebted to the Hibernia Savings & Loan Society, in the City and County of San Francisco, California, hereinafter referred to as the Hibernia Bank, in different sums of money, which said sums of money, so owing, were, on the —— day of ——, 1897, consolidated in a single sum, evidenced by a promissory note therefor, the payment thereof being secured by a mortgage of even date with said promissory note, executed and delivered by the said Anna Maria Krueger, deceased, to the Hibernia Bank, upon the said real property herein described. That said note and mortgage was in full force and effect at the same time of said Anna Maria Krueger's death.

V.

That, during said Anna Maria Krueger's lifetime, she also became indebted to one, Daniel Suter, a lawyer and money lender, in said City and County of San Francisco, in various sums of money, which were consolidated in two promissory notes, the payment thereof being secured by a mortgage of even date with [2] said notes, executed and delivered by said Anna Maria Krueger to said Daniel Suter,

said mortgage and notes being secondary to the mortgage and note of the Hibernia Bank.

VI.

That, on or about May 1st, 1902, Anna Maria Krueger, died, intestate, in said City and County of San Francisco, leaving her surviving, as her only heir, plaintiff herein. That said Anna Maria Krueger died in the building on said real property hereinabove described, and that at the time of her death, plaintiff was living with her, in said building, on said real property, and attended to her funeral. That in proceedings No. 27,450, Superior Court, of the State of California, in and for the City and County of San Francisco, John Farnham, as public administrator, of said city and county, petitioned for his appointment as administrator of the estate of said Anna Maria Krueger, deceased, setting forth, among other things, in his petition, that deceased had no heirs and no money, but the real property herein described; that, after hearing duly had, in Department 9 of said Superior Court, said Farnham was duly appointed, and thereafter qualified, as the administrator of the estate of said Anna Maria Krueger, mother of plaintiff, all of which was unknown to and without the consent of plaintiff, and, without plaintiff having, at any time received any notice of the filing of said petition, or, of the time and place of hearing the same, though said Farnham, with due diligence could have ascertained that plaintiff was the heir of said deceased.

That said Farnham proceeded with the administration of said estate, as required by law, all notices

being properly given, and orders therefor duly made. That the Hibernia Bank duly presented its claim for the sum of \$2,002.60, under its said mortgage, which said claim was, on October 22, 1902, approved and allowed by the [3] judge of said department 9; also, said Daniel Suter presented a claim on two promissory notes, totaling \$1,850.00, but, said claim was rejected by said Court, as being barred under Section 1499 of the Code of Civil Procedure.

VII.

That, in the month of November, 1902, in said Superior Court, in action No. 82,815, said Hibernia Bank sued to foreclose its said mortgage and allowed claim, making said Farnham, as administrator of the estate of Anna Maria Krueger, deceased, and, said Suter, defendants; no affidavit of service of the complaint of foreclosure on said Farnham, as administrator, or otherwise, was made and filed; that no service of summons in said action for foreclosure, with a copy of the complaint in said action attached was ever made on said Farnham, as administrator, nor an affidavit of serving such made and filed in said Superior Court; that no answer, appearance or demurrer was ever filed in said action to foreclose said Hibernia Bank mortgage by the said administrator, or by any person in his behalf; that the said Superior Court did not, at any time, prior to the obtaining of a judgment of foreclosure against said administrator, have jurisdiction of the said administrator of the estate of the said Anna Maria Krueger, deceased, or of the property of the said estate. That said Suter filed an answer, and the only answer

filed in said foreclosure action, asking that said Hibernia Bank have its decree of foreclosure as prayed for, and, also, that his rejected claim of \$1,850.00 be allowed and included in said decree of foreclosure as foreclosed; that, thereafter, on hearing before the Hon. J. C. B. Hebbard, in said Superior Court, a decree of foreclosure was made, whereby it was found that there was due said Hibernia Bank the sum of \$2,140.00, and, to said Daniel Suter the sum of \$1,850. as a second mortgage, [4] and one Oliver was then appointed to sell, as commissioner, said real property herein described, and directed to pay said loans out of the proceeds of said sale; that, at said hearing of said complaint in foreclosure, said administrator of the estate of Anna Maria Krueger, deceased, did not appear before the said Court, nor was he represented therein by counsel; that, after notice given, said property was, on July 8, 1903, sold to Daniel Suter for the sum of \$5,250.00, and, thereafter, said Oliver, as said commissioner, issued to said Suter a Certificate of Purchase, but did not, thereafter, execute to said Suter, or his assigns a deed conveying the title to said property to said Suter; that, at said sale the said Suter was not an innocent purchaser of said property, without notice.

VIII.

That, the above-mentioned judgment last mentioned, was absolutely void, for want of jurisdiction in the said Court, to make the same, under the circumstances stated in paragraph VII hereof, and a fraud on the estate of said Anna Maria Krueger, deceased; and the legal representative of said de-

ceased's estate had no opportunity to have his day in court, and to present the facts of the case to the Court.

IX.

That, during the month of April, 1904, plaintiff, for the first time, discovered that said John Farnham, had been appointed administrator of the estate of his mother, said Anna Maria Krueger, and, that said Hibernia Bank had foreclosed its said mortgage, and that under the said judgment of foreclosure, said property had been bought by said Suter; that, during all these proceedings, and times, said plaintiff received no notice of the same, nor was he notified to attend in court, nor did he have a day in court, or a chance to state the real facts concerning the same, or to protect his interests in said estate, or the said estate, though he was, at all [5] times in said City and County of San Francisco, living and dwelling on said real property herein described, and, also, was making regular payments of interest to said Suter; that, as soon as plaintiff was apprised of the said condition of the said estate of his said mother said Anna Maria Krueger, deceased, he had himself appointed administrator of the estate of Anna Maria Kreuger, deceased, in the place and stead of the said John Farnham, and still is the administrator of the said estate. Then, as administrator of the estate of Anna Maria Krueger, deceased, moved, in the said Superior Court, that said decree of foreclosure be set aside, together with all proceedings had thereon, on the ground and for the reason that said Court did not have jurisdiction to make and give said judg-

ment of foreclosure, and, that said judgment was void for want of jurisdiction, and a fraud on the said estate of Anna Maria Krueger, deceased, and, that it deprived the said estate of its property, and the heirs thereof of their just inheritance, without a day or hearing in court, and, after due notice given to the said Hibernia Bank and the said Daniel Suter of the time and place for hearing the motion to set aside the said void judgment of foreclosure the said Court made its order setting aside the said judgment of foreclosure and all proceedings had thereon and thereafter; that said Suter appeared in said court at the hearing of said motion to set aside the said judgment, though said Hibernia Bank did not appear. That, from the order of said court setting aside the said void judgment of foreclosure of said mortgage of said Hibernia Bank, under which said sale of said real property was made to the said Suter, no appeal or motion for a new trial was made, taken or attempted, nor has there been any appear or motion for a new trial taken or made to or from said order setting aside said judgment. [6]

X.

Tha plaintiff *has*, at all times herein mentioned, and now is, in the possession of and residing upon the said real property hereinabove described.

XI.

That, on June 5th, 1913, Daniel Suter died, in San Francisco, and his wife, Sophie Suter, one of the defendants herein, after due proceedings had, was appointed, and then qualified, and is now acting as the executrix of the will of Daniel Suter, deceased.

XII.

That, on August 5, 1913, said Sophie Suter, as said executrix, commenced proceedings in the Superior Court of the State of California, in and for the City and County of San Francisco, action No. 50,766, against plaintiff herein, individually, and not as administrator of the estate of Anna Maria Krueger, deceased, to eject plaintiff from said property, herein described, as will more fully appear by reference to said proceedings still remaining of record; that, said action was tried before Hon. George A. Sturtevant, on the 3d day of March, 1914, defendants Edward C. Harrison and Maurice E. Harrison appearing as counsel for said Sophie Suter, executrix, and said plaintiff herein, the defendant in said action, appearing in *propria persona*, attempting to defend said action, said plaintiff being without money to employ legal aid; that, at the suggestion of said defendants, Edward C. Harrison and Maurice E. Harrison, Otto Tum Suden, defendant herein, was, by the Court, appointed as guardian *ad litem* of plaintiff, in said action, for the purpose of appearing for said plaintiff and representing him and to present his defense in said action, and, to protect and care for plaintiff's interests in said action. That, after the trial of said action, the Hon. George A. Sturtevant rendered a decision in favor of the defendant in said action, the plaintiff herein, with costs of action, and dismissed the action, [7] which judgment as so rendered, was entered in Judgment Book 50 of said Court, page 210, on March 4th, 1914.

XIII.

That, thereafter, without the consent of plaintiff herein, and, without his knowledge, and, without, in any manner or form, being consulted or informed, and, without having any authority from plaintiff or the order of the said Court in said action, or, the order of the probate court in the Estate of Anna Maria Kreuger, deceased, and, without giving plaintiff herein opportunity to seek and to obtain separate and proper legal advice, and, without any effort to protect the interests of plaintiff in the estate of the said mother, or, to protect the property of said estate of said Anna Maria Krueger, deceased, and, without regard to his duties and obligations, as a guardian *ad litem*, and in excess and beyond his power and authority, said plaintiff herein being at all times an adult, and not insane or in any way incompetent to attend to his business or his property, nor, at any time having a judgment of incompetency rendered against him, the said Otto Tum Suden, defendant herein, conspired with and fraudulently agreed with said defendants, Edward C. Harrison and Maurice E. Harrison, and Sophie Suter, as executrix, and Sophie Suter, individually, that said judgment rendered and made against said Sophie Suter, executrix, and in favor of the defendant, plaintiff herein, be set aside, and, to such end, said defendant Otto Tum Suden filed papers in said action, permitting said judgment to be set aside, and waived all rights of appeal, in this plaintiff to such action; and, thereafter, said defendant Otto Tum Suden, allowed and permitted the said action

of Sophie Sutter, Executrix, vs. A. F. Krueger, as an individual, and not as the administrator of the Estate of Anna Marie Krueger, deceased, to be brought to trial again, and, on the 11th [8] day of July, 1914, and, without calling any of the witnesses called at the first trial, and, without calling any witnesses at all, and, without calling this plaintiff or notifying this plaintiff to be in court, and, this plaintiff not being in court, though at all times he is mentally able to fully comprehend the nature of courts, of laws, and the necessity of appearing in courts, on the hearing of matters before them, said defendant Otto Tum Suden allowed and permitted, in furtherance of the fraud and conspiracy between said defendants to deprive this plaintiff of his interests and rights in the property of the Estate of Anna Maria Krueger, deceased, and, to deprive and take away the property of the said Estate of Anna Maria Krueger, deceased, a judgment to be made and entered by the Court against this plaintiff, as defendant in said action, and in favor of said Sophie Suter, as the executrix of the Will of Daniel Suter, deceased, which said judgment recites, falsely, that said Daniel Suter, prior to his death, was the owner in fee simple and entitled to the possession of all of said real property herein described; and, that said property belongs to said Sophie Suter, as said executrix; and, purporting to quiet title to said real property in said Sophie Suter; and, to bar and enjoin all persons, including plaintiff, but not plaintiff as the administrator of the Estate of Anna Maria Krueger, deceased, from making any claim thereto, and, further, plaintiff is

ordered to pay costs of action; thereafter, said defendant, Otto Tum Suden, informed plaintiff that he had received from said Sophie Suter, executrix, \$1,500.00 to be paid to plaintiff for his interests in said property, out of which sum was to be deducted the sum of \$250.00 by said Otto Tum Sudden as a fee for legal services rendered, and, that this sum was paid under an order of the said Court of compromise after said Otto Tum Suden and said defendant, Edward C. Harrison, had agreed that such [9] sum should be paid to said plaintiff. This was rejected by this plaintiff.

That, prior to, at the time of, and always, the filing of said action against this plaintiff by said Sophie Suter, executrix, and the making and entry of said second judgment in said action, the said defendants, Otto Tum Suden, Edward C. Harrison, Maurice E. Harrison, and Sophie Suter fully knew and were fully advised, and charged with full and complete knowledge of all the facts, and conditions of the title and proceedings relating to the said real property herein described, and well knew that said Daniel Suter had no right, title or ownership therein or thereof, but, in defiance thereof, proceeded, as herein set forth, to take said property, without giving this plaintiff, either individually or as said administrator, his day in court, to his irreparable loss and damage.

XIV.

That said defendant, Frederick Eggers, is the duly elected, qualified and acting sheriff of the City and County of San Francisco, California; that said defendants, Otto Tum Suden, Edward C. Harrison,

Maurice E. Harrison and Sophie Suter, have caused a Writ of Possession to issue, and have placed the same in the hands of said defendant Eggers, for service and execution, and, said defendant is now attempting to execute the same and to dispossess plaintiff, and he will execute the said writ and dispossess plaintiff, to the irreparable damage and loss to the estate of Anna Maria Krueger, deceased, and this plaintiff, unless this Court restrain said defendants from proceeding with said writ of possession.

XV.

That plaintiff is the duly appointed, qualified and acting administrator of the estate of Anna Maria Krueger, deceased, that said estate is still in the course of probate, incomplete and not yet [10] closed, no payment of the expenses of administration, commissions or attorneys' fees, or charges against its property having been made.

XVI.

That said real property, as far as plaintiff can ascertain, is of the value of \$18,000.00. That, on January 22d, 1910, Daniel Suter offered to pay plaintiff \$1750.00 for said property. This was rejected by plaintiff.

XVII.

That this plaintiff has a good and meritorious defense to the enforcement of the said judgment, fraudulently caused to be entered by the said defendants in the said action of Sophie Suter, executrix, vs. A. F. Krueger (individually), and, that said plaintiff has fully and fairly stated to his attorneys all the facts of the case, and they have advised him that he

has a good and meritorious defense to the enforcement of said judgment.

XVIII.

That plaintiff is not incompetent, mentally unsound, insane, or unable to attend to and care for his property and business affairs, nor, has plaintiff had a judgment of incompetency, unsoundness or insanity made and entered against him, declaring him incompetent, or unsound or insane, nor, have any proceedings been instituted against plaintiff, by anyone, to have him declared incompetent, or insane, or mentally unsound. That the main trouble with this plaintiff has been his great lack of money with which to defray the expenses of his litigation, pay counsel fees, court costs, and, in seeking to get justice and have his day in court, and a day in court for the said estate of Anna Maria Krueger, deceased, this plaintiff has been sorely hampered and impeded by his lack of money. (11)

XIX.

That the said Otto Tum Suden, Edward C. Harrison, Maurice E. Harrison and Sophie Suter, defendants, have entered into and formed a conspiracy for the purpose of defrauding plaintiff of his interests in the estate of his said mother, Anna Maria Krueger, deceased, and, of depriving the said Estate of Anna Maria Krueger, deceased, of the property, herein described, and vesting the title thereof in said Sophie Suter, and, in furtherance of said conspiracy and fraud, said defendants have committed and caused to be committed and done all the matters and things hereinabove referred to from the day

that this plaintiff, as defendant, individually, obtained a judgment against defendant herein Sophie Suter, executrix, before Judge Sturtevant, whereby said Sophie Suter's action against this plaintiff was dismissed; also, as a further evidence of said conspiracy of said defendants, plaintiff sets forth that defendants have willfully, wrongfully and with knowledge and intent to deprive plaintiff of his interest in said real property, and, to deprive the said estate of Anna Maria Krueger, deceased, of the said real property, caused and perfected and executed such an agreement between themselves, whereby said judgment in favor of this plaintiff, individually, without right or authority, and without plaintiff having his day in court, to be set aside, and a new judgment entered in favor of said defendant, Sophie Suter, executrix; that this act of defendants will cause plaintiff the loss of his interest in the estate of Anna Maria Krueger, deceased, and also, the loss of the real property of the estate of said Anna Maria Krueger, deceased; that said defendants entered into the said conspiracy and agreement to defraud plaintiff and the estate of Anna Maria Krueger, deceased, with full knowledge of all the conditions of the legal actions had regarding [12] the title to said real property, and knew from such knowledge that the title to said real property was not in said Daniel Suter, notwithstanding any papers that may have been found among the effects of said Daniel Suter, after his death, by virtue of which the said Daniel Suter did not, at any time during his lifetime assert claim, right, title and own-

ership to and in the said real property herein described; that defendants, well knowing that the said judgment of foreclosure had in said suit by the said Hibernia Bank against the said Farnham, as administrator of the estate of Anna Maria Krueger, deceased was a void judgment for want of jurisdiction in the court to make the same, and, that a fraud had been worked upon the said estate of said Anna Maria Krueger, deceased, preventing said estate, as well as this plaintiff, from obtaining the benefit of a defense and day in court; that said defendants, knowing plaintiff to be a foreigner, of peculiar ideas and manners, not fully understanding the laws, in particular of the State of California, have used such as a further means of defrauding this plaintiff and the said estate of Anna Maria Krueger, deceased.

XX.

That the said conspiracy of said defendants, and the acts in furtherance thereof, are contrary to equity, seeking to take real property by an alleged title based on a judgment, void for want of jurisdiction, which ought not to be enforced in good conscience or equity, and, if permitted by this Court, will be an irreparable loss and damage to plaintiff and the Estate of Anna Maria Krueger, deceased, depriving plaintiff and said estate of Anna Maria Krueger, deceased, of property without their having had a day in court, or by due process of law, properly and legally done. [13]

XXI.

That this plaintiff has at different times prior hereto, offered to pay to said defendant Sophie Suter,

executrix, such money as was due to her said husband, the money to be obtained by a sale of the premises herein described, and such sum paid them as was justly due, and the balance of such money retained by the estate of said Anna Maria Krueger, deceased, and plaintiff here states that he is now, and always has been, willing to do equity to the estate of said Daniel Suter, deceased, and has not, at any time sought to willfully and purposely evade the payment to the said Suter of all moneys rightfully due him.

XXII.

That, from the day when the said void judgment obtained by the said Hibernia Bank was set aside to the day of filing the complaint of Sophie Suter, executrix, vs. A. F. Krueger, an individual, to wit, an interim of about ten years, no action, in any respect was taken by the said Daniel Suter to eject plaintiff or the estate of Anna Maria Krueger, from the real property herein described, or to set up and claim ownership thereof, the said plaintiff herein paying the taxes, during said time, against said property, and being in possession of the same to the exclusion of all others.

XXIII.

That plaintiff can have no adequate remedy or relief except in this court and to the end, therefore, that said defendants and each of them may, if they or either of them can show why plaintiff should not have the relief hereby prayed, and they make a full disclosure and discovery of all matters aforesaid and according to the best and utmost of their and

each of their knowledge, remembrance, information and belief, and that full, true, direct and [14] perfect answers be made to the matters stated hereinbefore and charged and not under oath,—and answer under oath being hereby expressly waived,—plaintiff prays this Honorable Court may grant the writs of injunction, both interlocutory and perpetual issuing out of and under the seal of this Honorable Court, perpetually enjoining and restraining said defendant Sophie Suter, executrix of the Will of Daniel Suter, deceased, her clerks, attorneys, agents, solicitors and assigns from dealing with, charging, conveying or in any manner transferring, selling, or encumbering said real property or any part thereof, and, or from interfering with the plaintiff in the control and management of the said property under direction of said probate court; also, that said defendants, and each of them, do not further take or cause to be taken any steps in the proceedings or premises, and that if this Court sees fit, a Receiver be appointed to take charge of said real property pending the termination of this suit.

And may it please this Honorable Court to grant unto said plaintiff not only the writ of injunction perpetual and interlocutory and the appointment of a Receiver, but, also, such other, further, separate, different and additional orders as to the Court shall seem meet in the premises, including writs of subpoena of the United States of America, directing such persons as necessary to appear for the termina-

tion of this suit before this Court and perform the orders of this Court.

WARNER TEMPLE,
MERCER H. FARRAR,
Attorneys for Plaintiff. [15]

The United States of America,
Northern Judicial District of California,
State of California,
City and County of San Francisco.

On this 29th day of July, 1915, at and in the City and County of San Francisco, State of California, before me, personally, appeared August Ferdinand Krueger (otherwise Kruger), the plaintiff named in the foregoing Bill of Complaint, and, being duly sworn by me, made solemn oath and says that he has heard read, the foregoing Bill of Complaint, and knows the contents thereof, and, that the same is true of his own knowledge except as to the matters therein stated upon information or belief, and, as to those matters he believes it to be true.

AUGUST FERDINAND KRUEGER.

Subscribed and sworn to before me at and in said City and County of San Francisco, State of California, on this 29th day of July, 1915.

[Seal] MARTIN ARONSOHN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jul. 29, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

*In the District Court of the United States, in and
for the Northern District of the State of Cali-
fornia, Second Division.*

AUGUST FERDINAND KRUEGER (Otherwise
Kruger) as Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise Kru-
ger), Deceased,
Plaintiff,
vs.

FREDERICK EGGERS, as Sheriff of the City and
County of San Francisco, California; SO-
PHIE SUTER, as Executrix of the Will of
DANIEL SUTER, Deceased; SOPHIE SU-
TER; OTTO TUM SUDEN, EDWARD C.
HARRISON, MAURICE E. HARRISON,
Defendants.

Order to Show Cause and Restraining Order.

The plaintiff, in the above-entitled cause having commenced a suit in equity in the above-entitled court against the above-named defendants, and praying for an injunction against said defendants, requiring them to refrain from certain acts in the complaint on file in said action, and hereinafter more particularly mentioned;

NOW THEREFORE, on reading said Complaint, duly verified by the oath of the plaintiff, and it satisfactorily appearing to me that it is a proper case for an injunction to issue, and that sufficient grounds exist therefor;

IT IS ORDERED by me, a Judge of said Court, that said defendants, and each of them, do appear

before me on Monday, the 9th day of August, 1915, in the courtroom of the above-entitled court, general Postoffice Building, San Francisco, California, and show cause, if any they have, why said injunction should not issue;

AND IT IS FURTHER ORDERED that until the determination of this order to show cause, the said defendants and each of them and all their servants, attorneys, agents and assigns be and are hereby restrained from dispossessing said complainant and plaintiff herein from the property described in the said complaint, [17] situated in the City and County of San Francisco, California, and particularly described as follows, to wit:

Beginning at a point on the westerly line of Ninth Avenue, distant thereon 100 feet southerly from the southerly line of Clement street; running thence southerly along said westerly line of Ninth Avenue 75 feet; thence at a right angle westerly 120 feet; thence at a right angle northerly 25 feet; thence at a right angle westerly 120 feet to a point in the easterly line of Tenth Avenue; thence at right angles northerly and along said Tenth Avenue 50 feet; thence at a right angle easterly 182 feet and 6 inches; thence at a right angle northerly 100 feet to a point in the southerly line of Clement street 25 feet; thence at right angles easterly 32 feet and 6 inches to said western line of Ninth Avenue and the point of beginning.

Being part of Outside Land Block 190.

Let a true copy hereof be served on each of the defendants.

Dated this 30 day of July, 1915.

WM. W. MORROW,
Judge.

[Endorsed]: Filed Jul. 30, 1915, at 9:30 A. M. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

31,401-15.

UNITED STATES FIDELITY AND GUARANTY
COMPANY.

Capital Paid in Cash \$2,000.000. Total Resources
over \$6,000,000.

HOME OFFICE.

BALTIMORE, MD.

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

AUGUST FERDINAND KRUEGER, as Adminis-
trator of the Estate of ANNA MARIA KRUE-
GER, Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff, et al.,

Defendants.

Undertaking of Interim Injunction.

Whereas, heretofore, to wit, on the 30th day of July, 1915, the above-entitled Court made an order in the above-entitled cause, *inter alia* to the effect that a preliminary injunction *pendente lite* be issued herein in favor of plaintiff and against these defendants restraining the defendants and *its* each of them, their

officers, agents, employees and servants from the commission of certain acts as in the aforesaid order filed herein is more particularly described.

NOW, THEREFORE, the undersigned the United States Fidelity and Guaranty Company, a corporation, having its principal place of business in the City of Baltimore, State of Maryland, and having a paid-up capital of not less than Two Million Dollars (\$2,000,000), duly incorporated under the laws of the State of Maryland for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all [19] the requirements of the laws of the State of California respecting such corporation, in consideration of the premises and the issuing of the said injunction does hereby undertake in the sum of One Thousand and no/100 (\$1,000.00) Dollars and promise to the effect, that in case said injunction shall issue the said plaintiff will pay to the said parties or any party who may be found to be wrongfully enjoined or restrained thereby such damages not exceeding the sum of One Thousand and no/100 (\$1,000.00) Dollars as such party or parties aforesaid may sustain by reason of said injunction, if the said Court finally decide that the plaintiff was not entitled thereto.

Dated at San Francisco, California, this 31st day of July, 1915.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY,

[Seal]

By H. V. D. JOHNS,

By BRADLEY CARR,

Its Attorneys in fact.

[Endorsed]: Approved. Wm. W. Morrow, Circuit Judge. Filed Aug. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

In the District Court of the United States, in and for the Northern District of the State of California, Second Division.

No. 197.—IN EQUITY.

AUGUST FERDINAND KRUEGER, *alias*, as Administrator, etc.,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff, etc., et al.,

Defendants.

Motion to Dismiss.

Sophie Suter, as executrix of the Will of Daniel Suter, deceased, and Sophie Suter, defendants herein, now move the Court to dismiss the plaintiff's bill filed in this cause, with the proceedings had thereon, for the following causes, viz.:

First. Because it appears from said bill that this defendant as such executrix has instituted as plaintiff in the Superior Court of the State of California, in and for the City and County of San Francisco, an action against said plaintiff herein as defendant therein, for the recovery of the possession of, and the quieting of her title to, all the property described in said bill herein, and said plaintiff never presented or filed any petition or application for the removal of said cause to this Court, but submitted himself to and accepted the jurisdiction of said

Superior Court, which jurisdiction effectually attached to said property, to the exclusion of the jurisdiction of this Court; in which action a judgment has been rendered against said plaintiff herein and in favor of this defendant, which judgment has never been vacated, reversed or modified, or appealed from, and is now final. [21]

Second. Because it appears that said plaintiff seeks by said bill to obtain an injunction to stay proceedings on the execution of a judgment of said Superior Court of the State of California, in contravention of the provisions of Sec. 265 of "The Judicial Code."

Third Because of insufficiency of fact shown by said bill to constitute a valid cause of action in equity.

August 4th, A. D. 1914.

EDWARD C. HARRISON,
MAURICE E. HARRISON,

Solicitors for Defendants Sophie Suter as Executrix
of the Will of Daniel Suter, Deceased, and
Sophie Suter.

[Endorsed]: Filed Aug. 4, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [22]

*In the District Court of the United States, in and
for the Northern District of the State of Cali-
fornia, Second Division.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUGEER, (*alias*), as
Administrator, etc.,

Plaintiff,

vs.

FREDERICK EGGERS, as Sheriff, etc., et al.,
Defendants.

**Affidavit of Edward C. Harrison in Response to Order
to Show Cause.**

State of California,

City and County of San Francisco,—ss.

Edward C. Harrison being duly sworn, deposes
and says:

I am one of the defendants in the above-entitled action and one of the attorneys therein for Sophie Suter, as executrix of the will of Daniel Suter, deceased, and Sophie Suter individually, also defendants in said action.

There is of record in the office of the county recorder of this City and County of San Francisco State of California, in Book 2068 of Deeds, at page 218, a deed recorded therein at the request of Daniel Suter on July 18th, 1904, the same being a deed bearing date on said 18th day of July, A. D. 1904, and made by B. P. Oliver as commissioner of the Superior Court of said City and County of San Francisco, in the action of foreclosure No. 82,815 in said

Superior Court mentioned and referred to in Paragraph VII of the plaintiff's bill herein, conveying to said Daniel Suter all the real property described in said plaintiff's [23] said bill, in and by which deed the said commissioner, as grantor therein, recites the sale by him, under and pursuant to the judgment and decree in said action No. 82,815, to said Daniel Suter on the 8th day of July, A. D. 1903, for the sum of \$5,550 in United States gold coin, of all said real property, and the payment of said sum to him by said Daniel Suter and the issuance of the usual certificate in duplicate of the said sale, and the expiration of the period of twelve months subsequent thereto without any redemption having been made;

On the 30th day of April, A. D. 1907, August Ferdinand Krueger, the said plaintiff herein, filed in said county recorder's office, a notice of ownership, wherein and whereby he gave notice that he was the owner of an interest in all said real property, and that the character of said interest was absolute and was obtained by him from J. J. O'Brien and Howard Havens, respectively, by purchase for valuable consideration by several deeds recorded in said county recorder's office respectively on June 12th, 1880, on February 8th, 1881, and on August 31st, 1886; and that said notice of ownership was recorded in said county recorder's office in Liber 2 of Notices of Ownership, at page 38. On March 30th, A. D. 1909, the said August Ferdinand Krueger, plaintiff herein, filed in said county recorder's office a written instrument entitled "Anna Maria Krueger, alias to August F. Krueger Affidavit,"

which instrument was signed by him, the said August Ferdinand Krueger, and in and by which he referred to said record of said Notice of Ownership for a description of said property, and in and by which he stated and made it known that he was in the actual possession and the owner and principal party in all transactions pertaining to said property. I am also one of the [24] attorneys for said Sophie Suter as executrix as aforesaid in the action of ejectment No. 50,766 in said Superior Court mentioned in the paragraph numbered XII of said Bill herein; and instituted said action on behalf of said Sophie Suter, executrix, as plaintiff, and managed and conducted said action and all proceedings therein on her behalf.

The said action of ejectment was begun on the 5th day of August, A. D. 1913; and the summons in said action was on the same day duly issued and duly served by the sheriff of said city and county upon the said August Ferdinand Krueger, the defendant therein, in the City and County of San Francisco. No answer or other appearance was made in said action by said Krueger within the time allowed by law therefor, and on and prior to the 21st day of August, A. D. 1913, said defendant was in default and the said executrix therein was entitled to have his default entered in said action; but because I believed, and still believe, the said Krueger to be mentally incompetent, and unable to take proper care of his own property interests, I did not feel justified in applying on said executrix' behalf for such default.

On the 22d day of August, A. D. 1913, the said

plaintiff served an answer made by him in person in said action, and I believe filed the same in said action. The said answer, in my opinion, stated, and states, no defense to the cause of action set out in the complaint in said action; and the said executrix was, after the filing of said answer, entitled to a judgment in her favor upon the pleadings in the cause. Because of my belief, however, aforesaid, that the said plaintiff was and is mentally incompetent, which belief was confirmed and strengthened by the contents of said answer, I did not feel justified in applying for such judgment on behalf of said executrix. Instead, I made application on [25] September 17th, 1913, to said Superior Court by petition, alleging the institution and pendency of the action, and the issuance and the service of the summons therein on said 5th day of August, A. D. 1913, and the executrix' belief of said Krueger's incompetency, and the fact that he had no general guardian, and the necessity for the appointment of a guardian *ad litem* to appear for and represent him and properly present his defense in said action, if he had any. Upon the presentation of the petition aforesaid, the said Superior Court duly made on said September 17th, A. D. 1913, its Order to Show Cause requiring the said plaintiff to appear before it in Department No. 8 thereof, on October 2d, A. D. 1913, at two o'clock P. M. of that day, then and there to show cause, if any he had, why said application should not be granted and a guardian *ad litem* appointed accordingly to appear for, and represent him in said action.

[On said 2d day of October, A. D. 1913, the said application came regularly on to be heard at the hour and place appointed, and proof was first made of the service by the sheriff of this City and County of San Francisco, upon said Krueger, of said Order to Show Cause as therein required; and after hearing had, it was then and there by said Superior Court found and adjudged, that said Krueger was an incompetent person, and, by reason of his unsoundness of mind, mentally incompetent to manage his property, that he had no general guardian, and that it was necessary that a guardian *ad litem* should be appointed to appear for and represent him and properly present his defense in said action; and upon such finding and adjudication, it was duly ordered that Otto tum Suden, Esq., an attorney at law of said Superior Court, be, and he was thereby, appointed guardian *ad litem* [26] of said Krueger to appear for and represent him, and present his defense in said action, and further ordered that said guardian *ad litem* should be allowed ten days' time from and after his receipt of a copy of his appointment and of a copy of the complaint therein, wherein and whereby to reply thereto on said Krueger's behalf.

The said guardian *ad litem* was thereafter duly served with the order last mentioned and with a copy of said complaint in said action. On the 9th day of October, A. D. 1913, the said guardian *ad litem* served upon me, said executrix' attorney, his answer to said complaint in said action, wherein and whereby he denied all the allegations of said com-

plaint and put said executrix to her proof of all such allegations; and thereafter said guardian *ad litem* served upon me his duly verified amendment to said answer, wherein and whereby he amended the same by the addition thereto of the defense of the statute of limitations;

The said action came regularly on for trial before the said Superior Court on the 9th day of December, A. D. 1913, upon the said complaint of the said executrix and the answer of said Krueger made on his behalf by his said guardian *ad litem*; and upon such trial I appeared as counsel for said executrix, and Mr. Otto tum Suden, the said guardian *ad litem*, appeared on his own behalf and on behalf of said Krueger. The said Krueger was present in person at such trial, and to the extent that he was mentally able to do so, participated in the same, and counseled with, and assisted his said guardian *ad litem* in his conduct of his defense to said action. He was offered as a witness on his own behalf, but because of his mental condition, was found by the said Superior Court incompetent to testify as a witness, and I was not permitted on executrix' behalf to examine him. [27] The said Krueger did not at the time of said trial or at any other time question the propriety of the Court's order appointing his said guardian *ad litem* or ask permission personally or through counsel to be separately represented or question the right or authority of his said guardian *ad litem* to appear for and represent him in said action. The said Krueger was so well and ably represented, and his defense so vigorously presented by his said

guardian *ad litem* that the Court was induced upon the trial of said action in what has seemed to me, and still seems to me, to be palpable error in its rendition of a judgment in favor of said Krueger; the Court finding that the defense of the statute of limitations was not sustained, and basing its conclusion in said Krueger's favor upon the proposition that the foreclosure sale under which the executrix claimed title was not valid.

Upon the trial of said action it appeared that the said Daniel Suter had derived his title under the said commissioner's deed hereinbefore mentioned and that the record in the foreclosure suit was destroyed in the fire of 1906.

Warner Temple, Esq., testified as a witness in said action on behalf of said Krueger, the defendant therein, that he had examined the record in the foreclosure suit whilst it was still in existence and just before the time to appeal from the judgment had expired, and upon such examination found that the decree recited an appearance on behalf of the defendant administrator of the estate of Anna Maria Krueger, deceased, and his filing of an answer; but that no such answer in fact was in the papers and had never been filed, and that the attorneys for that administrator had explained upon the hearing of a subsequent motion in that cause that the reason they had not filed the answer was because they did not have the money to pay the fees for filing the same; [28] and Mr. Temple testified further that he had the said defendant August F. Krueger substituted in the place of the former administrator as

administrator of the estate of Anna Maria Krueger, deceased, and on his behalf took an appeal from the judgment and also made a motion, more than six months after the entry of the decree and the sale thereunder, to vacate it and set it aside as void, for the reason that it recited the filing of an answer which has not in fact been filed.

Mr. George A. Clough, who appeared as one of the attorneys for the plaintiff in the foreclosure suit before mentioned, testified on said trial that Messrs. McGowan and Westlake, the attorneys for the estate of Anna Maria Krueger, deceased, served him with an answer on behalf of the administrator of her estate as defendant in that action, and appeared on his behalf, and participated in the trial of the action.

Mr. Temple testified further on said trial that he had taken his appeal from the judgment of foreclosure, before his motion to vacate the judgment for the reason stated was granted and an order made purporting to vacate and annul the judgment of foreclosure as void. No notice of intention to move for a new trial of said action in foreclosure was ever served or filed, and no application for relief under Section 473 of the Code of Civil Procedure was made within six months as thereby required; the only ground of the last-mentioned order being that the judgment was void because it recited an appearance by a defendant whose answer was not in fact on file.

From the facts briefly hereinabove stated, I was, as I have already said, perfectly convinced that the title of the plaintiff's testator was good and that she was entitled to the judgment in this action, and

that I could without difficulty reverse on appeal the judgment which has been ordered in his favor. [29]

Thereafter my motion for a new trial of said action was granted, as shown by the record therein. If it had not been granted and if my appeals from the judgment and from an order refusing to grant it had been unsuccessful, and the judgment in defendant's favor herein affirmed, the result would have been that I would have only been put to the trouble of acquiring whatever interest the defendant might have in the property by a sale thereof in probate, and the application of the proceeds of such sale to the payment of indebtedness due to the estate of Daniel Suter, deceased, and secured by the equitable mortgage represented by his purchase at the former foreclosure sale. Since the sale to said Daniel Suter under said decree of foreclosure, which sale was made as aforesaid on July 8th, 1903, the said Krueger has paid none of the taxes upon said property; but all said taxes have been paid by the said Daniel Suter, and since his death by his said executrix; portions of the property have been sold under foreclosure for street assessment liens and the redemptions therefrom necessarily made by said executrix; and the following is a true and correct statement of all the expenditures made by the said Daniel Suter and his estate in the purchase of said property and the payment of taxes and other charges and liens upon the same as far as I am able to state them from records and vouchers at my disposal (and not including any disbursements or expenditures unknown to me) with interest thereon at seven per cent. compounded annually, namely:

[Statement of Expenditures Made by Daniel Suter and His Estate.]

1903.				
July 8.	Price paid at commissioner's sale,			\$5550.00
1915.				
Aug. 9.	Interest thereon for 12 years and 1 mo.			7016.86
1904.				
Apr. 30.	Taxes paid (estimated)	\$40.00		
	interest thereon for			
	11 years,			\$44.16
[30]				
1905.				
Apr. 30.	Taxes paid		50.00	
	Interest thereon			48.32
Nov. 27.	Taxes paid		25.30	
1906.				
Apr. 30.	" "		25.30	
	Interest on	\$50.60		42.39
Nov. 26.	" "		27.49	
1907.				
Apr. 29.	" "		27.49	
	" "	\$54.98		39.46
1908.				
Jan. 27.	" "		23.64	
Apr. 27.	" "		23.64	
	" "	\$47.28		27.42
1908.				
Nov. 30.	" "		34.15	
1909.				
Apr. 26.	" "		34.15	
	" "	\$68.30		34.15
Nov. 29.	" "		42.00	
1910.				
Apr. 25.	" "		42.00	
	" "	\$84.00		33.80
Nov. 28.	" "		52.00	
1911.				
Apr. 24.	" "		52.00	
	" "	\$104.00		32.31
Nov. 27.	" "		53.82	

1912.

Apr. 29.	"	"		53.82	
			"	"	
				\$107.67	24.17
Nov. 25.	"	"		83.87	
Apr. 24/13.	"	"		83.87	
			"	"	
				\$167.74	24.30
Nov. 24/13.	"	"		89.79	
Apr. 23/14.	"	"		89.79	
			"	"	
				\$179.58	12.57
Nov. 27/14.	"	"		91.68	
Apr. 16/15.	"	"		91.68	
Total taxes paid					1137.48
Total interest paid,					363.05
Street assessment redemptions					
	Dec. 3/13.	J. J. Dowling			955.60
			Interest thereon		112.60
	Mch. 9/14.	J. G. Harney			299.10
			Interest thereon		29.66
Compromise payment to Krueger June 12/14.					1500.00
[31]					
			Interest thereon		121.62
					<hr/>
					\$17085.97

I am informed and believe that the rate of interest upon the notes upon which judgment was given in favor of said Suter in said foreclosure suit was 8 per cent, per annum, compounded semi-annually. I have no certain personal knowledge of this, however, and have used the rate of seven per cent per annum, compounded annually, as one more nearly fair to an accurate ascertainment of what *would the* just debt of the Kruger Estate to the Suter Estate if the foreclosure sale should be deemed as set aside and the redemption permitted.

An official appraisement of said real property has been twice made by the appraisers appointed for the purpose of said Superior Court in the matter of the estate of Daniel Suter, deceased. The latter of these

appraisements was made on February 15, A. D. 1915, and in both of these appraisements the value of all the said real property was placed at the total sum of \$13,500.00. I have made inquiries of real estate brokers and others as to the price that can properly be realized upon a sale thereof; and from all the information that I have been able to obtain during the two years devoted to such inquiries I am of the opinion that it will not be possible to realize at or near this time any price therefor in excess of \$15,000.00.

Because, however, I believed, and still believe, that the interest of the estate of said Daniel Suter, deceased, would be best served by a settlement that would give said Krueger a large portion of any possible equity that he might have in said property,—
[32] the said estate having a very heavy indebtedness, some of which bears a very heavy rate of interest,—I offered, after a new trial of said action in ejectment had been granted by said Superior Court, to pay to the said guardian *ad litem* \$1000.00 by way of compromise. He would not accept this offer; and after some negotiations, we finally agreed upon \$1,500.00 as a fair sum to pay to the said Krueger by way of compromise of the controversy in said action. This compromise and the considerations and the inducements leading up to it were thereafter fully explained to the Hon. Geo. A. Sturtevant, the Judge who presided at the trial of said action and heard the testimony adduced upon such trial, and who made the said order appointing said guardian *ad litem*, and after such explanation he made, upon

the application of said guardian *ad litem*, an order approving the compromise so agreed upon, and I, on behalf of the executrix, paid to said guardian *ad litem*, to effect and consummate such compromise, the said sum of \$1500.00. The same is still retained by said guardian *ad litem*, and no offer or proposition has been made by him or on his behalf, or on behalf of said Krueger, to return the same or any part thereof to the executrix or to me. I believe the settlement made is one highly advantageous to said Krueger, and it is one that I would not have made if it had not been for the necessities aforesaid of the executrix and the estate represented by her.

After the aforesaid compromise had been consummated, to wit, on August 5th, A. D. 1914, I was served with a notice of motion, an order shortening time and accompanying affidavits, copies of all of which are as follows: [33]

*In the Superior Court of the City and County of
San Francisco, State of California.*

SOPHIE SUTER (as Executrix, etc.),

Plaintiff,

vs.

AUGUST F. KRUEGER,

Defendant,

Notice of Motion [in Superior Court for Order Setting Aside Waiver and Compromise of July 22, 1914, etc.].

To the above-named plaintiff and to Messrs. Edward C. and Maurice E. Harrison, her attorneys and to Otto tum Suden, Esq., heretofore purported to be appointed guardian *ad litem*:

You and each of you will please take notice, that on August 7, 1914 at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the above-named defendant will move the Court for the following orders and each of them:

1. Setting aside the waiver and compromise of July 22, 1914, and the order authorizing same.

2. Setting aside the order authorizing a fee of \$250 to said purported guardian *ad litem*.

3. Setting aside the judgment for plaintiff made and entered July 11, 1914.

4. Setting aside the order of June 5, 1914, granting motion for new trial.

5. Setting aside the settlement of the bill of exceptions herein.

6. Discharging said purported guardian *ad litem*.

7. Discharging said purported guardian *ad litem*, *nunc pro tunc*, as of March 4, 1914.

8. Setting aside the finding that defendant was incompetent, of October 3, 1913.

9. Setting aside the waiver of a jury trial made by said [34] purported guardian *ad litem* on said July 11, 1914.

Said motions will be made upon the ground that

the said purported guardian *ad litem* had no authority to act for defendant or agree to said or any compromise, or waive any error, or waive jury trial, or admit away any of the rights of affiant; and on the further ground that said purported guardian *ad litem* had no authority to act after March 4, 1914, or to agree to the said bill of exceptions, or to receive notice of motion for new trial, or appear thereon, and on the further ground that the Court was not informed or if at all "informed," misadvised of the value of the lands affected by the so-called compromise, and on the further ground that the Court had no jurisdiction to make said orders, or any of them, and on the further ground that defendant is neither an infant nor insane, nor has been during the pendency of said action; and will be based on this notice of motion, the affidavits served and filed herewith and all the papers and records of said action.

ARTHUR CRANE,

Attorney for Defendant.

Good cause appearing therefor, it is ordered that the time for serving the foregoing notice be and is hereby shortened so that the same may be served this day.

August 5, 1914.

GEO. A. STURTEVANT,

Judge of the Superior Court. [35]

*In the Superior Court of the City and County of
San Francisco, State of California.*

No. 50,766.

SOPHIE SUTER (as Executrix, etc.),
Plaintiff,

vs.

AUGUST F. KRUEGER,
Defendant,

Affidavit of Defendant.

State of California,
City and County of San Francisco,—ss.

August F. Kreuger, being duly sworn, deposes and says: I am the defendant in the above-entitled action.

Heretofore, to wit, October 3, 1913, the above-entitled Court made an order purporting to appoint Otto tum Suden, Esq., guardian *ad litem* for me and on my behalf to defend said action.

Said appointment was made by the Court, upon the mistaken and wrongful allegation of plaintiff that I was “incompetent” and without any allegation or evidence of “infancy” or “insanity.”

On March 14, 1914, judgment was given in my favor on subject matter in said action, and I was so informed by said Otto tum Suden, but I paid him no fee for his services in said matter, because he had told me before that he did not expect a fee.

After hearing, as aforesaid, that judgment in said action had been given in my favor, I was advised and

believed that said purported guardianship *ad litem* was at an end.

I therefore did not examine the records of said action after said March 14, 1914 until after July 22, 1914. Had I not believed that said guardianship was at an end, I would have frequently examined the records during said period, to discover [36] what my purported guardian was assuming to do on my behalf.

I did not know until after said July 22, 1914, that my said purported guardian had on my behalf purported to agree to the correctness of the bill of exceptions proposed by plaintiff, or that a motion for new trial was pending, or that same was granted by the Court, or that a jury trial was waived, or that the Court gave Judgment for plaintiff on July 11, 1914, or that my purported guardian petitioned for leave to accept \$1,500 from plaintiff, to waive, on my behalf, the error of that judgment, or that the Court granted said petition, or that my said purported guardian paid himself a fee of \$250 out of said \$1,500, and all said acts were done without my knowledge or consent and I did not agree and do not agree to said or any compromise.

Affiant further alleges that his said purported guardian Otto tum Suden, Esq., never inquired, advised or conferred with, *or* him, as to the extent or the value of the lands surrendered by said compromise; that the market value of said lands was then and now is the sum of more than \$20,000; said lands were purchased by affiant in the year 1880 and he has been in possession thereof ever since.

Affiant is now and has at all times since, to wit the year 1903 been ready, able and willing to pay all lawful claims or demands on said lands and particularly the principal and interest to date of any and all liens or incumbrances thereon.

That the total of all said claims, liens and incumbrances did not then and does not now exceed the sum of \$8,000, or thereabouts, and if said amount were paid in full out of the value of said lands, affiant would still have a net interest of \$12,000 therein. Affiant is unwilling to compromise his said interest of \$12,000 for \$1,500 or for any other sum less than \$12,000. [37]

Affiant further alleges that he is not, and was not at any time since the commencement of this action, a minor or infant and that he is not, and never has been, insane.

AUGUST FERDINAND KRUEGER.

Subscribed and sworn to before me this 5th day of August, 1914.

[Seal] J. J. KERRIGAN,
Notary Public in and for the City and County of San
Francisco, State of California. [38]

*In the Superior Court of the City and County of
San Francisco, State of California.*

SOPHIE SUTER (as Executrix, etc.),
Plaintiff,

vs.

AUGUST KRUEGER,
Defendant.

Affidavit of L. H. Moise.

State of California,

City and County of San Francisco,—ss.

L. H. Moise, being duly sworn, deposes and says: I am an officer, to wit, the president of the Moise-Klinkner Co., having its factory and offices at 1212 Market Street in said city and county, and as such have been personally acquainted with the above-named defendant, August F. Krueger.

Said defendant has been employed by said Moise-Klinkner Co., for more than 15 years in a position requiring good common sense and ability and has given, and is still giving, satisfaction in said employment.

I have personally kept in touch with him during that period of time and have found him honest, sober, industrious and intelligent.

He has never exhibited any symptoms of insanity.

L. H. MOISE.

Subscribed and sworn to before me this 5th day of August, 1914.

[Seal]

A. J. NAGLE,

Notary Public in and for the City and County of San Francisco, State of California. [39]

On August 7th, A. D., 1914, the motion described in the foregoing notice was made in said Superior Court on behalf of said Krueger and was heard by the Court and submitted upon the foregoing affidavits of myself and said Otto tum Suden filed and read in opposition thereto. Thereafter on the 17th day of August, A. D., 1914, the said Superior Court

made and entered in its minutes an order denying said motion, a copy of which order is as follows:

**[Order of Superior Court Denying Motion for Order
Setting Aside Waiver and Compromise of July
22, 1914, etc.]**

Monday, August 17, 1914.

Present—Hon. GEO. A. STURTEVANT, and
Officers of the Court.

50,766.

SOPHIE SUTER, as Executrix, etc.,
vs.

AUGUST F. KRUEGER,

In this action defendant's motion for orders, (1) Setting aside the waiver and compromise of July 22, 1914, and the order authorizing same, (2) Setting aside the order authorizing a fee of \$250.00 to said purported guardian *ad litem*, (3) Setting aside the judgment for plaintiff made and entered July 11, 1914, (4) Setting aside the order of June 5, 1914, granting motion for new trial, (5) Setting aside the settlement of the Bill of Exceptions herein, (6) Discharging said purported guardian *ad litem*, (7) Discharging said purported guardian *ad litem, nunc pro tunc*, as of March 4, 1914, (8) Setting aside the finding that defendant was incompetent of October 4, 1913, (9) Setting aside the waiver of a jury trial made by said purported guardian *ad litem*, of said July 11, 1914, having been heretofore submitted to the Court for consideration and decision, and [40] the Court having now considered the same and being fully advised, it is ordered that said defendant's

motion be and the same is hereby denied.

Vol. 88 of Minutes, p. 243.

I believe the said Krueger to be mentally incompetent to take proper care of his property; and such was my belief at the time I made application for the appointment of a guardian *ad litem* to represent him. My belief in his mental incompetency is based upon personal interviews which I have had with him personally, upon his conduct in his neglect of what he claims to be his own interests in the property, in permitting the same to be sold for street assessments, in the manner of his occupation of the property, resulting in complaints concerning the same from the health department, and the contents of his answer on file in said action in said Superior Court, and upon his demeanor in the courtroom upon the trial of said action and his demeanor upon every occasion when I have seen him; and also from his inability to comprehend the value to him of the compromise made on his behalf and his attitude and conduct with reference thereto.

EDWARD C. HARRISON.

Subscribed and sworn to before me this 7th day of August, A. D. 1915.

[Seal]

ALICE SPENCER,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 16, 1915. Walter B. Maling, Clerk. [41]

[Deed—Commissioner to Daniel Suter.]

THIS INDENTURE, made the eighteenth day of July in the year of our Lord 1904, between B. P.

Oliver, a commissioner duly appointed by the Superior Court of the City and County of San Francisco, State of California, and in the action hereinafter mentioned, to make sale of the property hereinafter described, the party of the first part, and Daniel Suter, the party of the second part, WITNESSETH:

WHEREAS, in and by a certain judgment and decree, made and entered by the said Superior Court on the tenth day of June, 1903, in a certain action then pending in said court, wherein the Hibernia Savings & Loan Society was the plaintiff and John Farnum as administrator of the estate of Anna M. Krueger, deceased, et al., were the defendants, the number of the case being 82815, it was among other things ordered, adjudged and decreed that all and singular the mortgaged premises described in the complaint in said action and specifically described in said judgment and decree, should be sold at public auction by the said party of the first part, as such commissioner, in the maner required by law, and according to the course and practice of said court, that said sale be made for gold coin of the United States, in the said City and County of San Francisco, State of California between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, on such date as the said commissioner should appoint; that any of the parties to the said action might become the purchaser at such sale; and that said commissioner should execute the usual certificate and deeds to the purchaser or purchasers, as required by law.

AND WHEREAS, the said commissioner did, at the hour of ten o'clock A. M. on the eighth day of July, 1903, after due public notice had been given, as required by the laws of this [42] State and the course and practice of said Court, duly sell at public auction, in the said City and County of San Francisco, State of California, agreeably to the said judgment or decree and the provisions of law, the premises in the said decree or judgment mentioned, at which sale the whole premises in said judgment or decree and hereinafter described were fairly struck off to Daniel Suter, the said party hereto of the second part for the sum of Fifty-five Hundred and Fifty Dollars, U. S. Gold Coin, *it* being the highest bidder, and that being the highest sum bid for the same.

And whereas, the said party of the second part thereupon paid to the said commissioner the said sum of money so bid by it.

And whereas, the said commissioner thereupon made and issued, the usual certificate in duplicate of the said sale in due form of law, delivered one thereof to the said purchaser and caused the other to be filed in the office of the county recorder of said City and County of San Francisco, State of California.

And Whereas, more than twelve months have elapsed since the date of said sale and no redemption has been made of the premises so sold as aforesaid, by or on behalf of the said judgment debtors, or on behalf of any other person.

Now, this Indenture Witnesseth: That the said

party of the first part, the said commissioner, in order to carry into effect the sale so made by him as aforesaid, in pursuance of said judgment and decree, and in conformity to the statute in such case made and provided, and also in consideration of the premises and said sum of Fifty-five Hundred Dollars (U. S. Gold Coin), so bid and paid by the said purchaser, said party of the second part, [43] the receipt whereof is hereby acknowledged, has granted, bargained sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part and to *its* successors and assigns forever all those certain lands, pieces, or parcels of land situate, lying and being in the said City and County of San Francisco, State of California, and bounded and particularly described as follows, to wit:

First. Commencing at a point on the southerly line of Clement Street distant thereon thirty-two feet and six inches westerly from the westerly line of Ninth Avenue, running thence westerly along said southerly line of Clement Street twenty-five feet, thence at right angles southerly one hundred feet, thence at right angles easterly twenty-five feet, and thence at right angles northerly one hundred feet to the point of commencement.

Second. Commencing at a point on the easterly line of Tenth Avenue distant thereon one hundred feet southerly from the southerly line of Clement Street, running thence southerly along said easterly line of Tenth Avenue fifty feet, thence at right angles easterly one hundred and twenty feet, thence

at right angles northerly fifty feet, and thence at right angles westerly one hundred and twenty feet, to the point of commencement.

Third. Commencing at a point on the westerly line of Ninth Avenue, distant thereon one hundred feet southerly from the southerly line of Clement Street, running thence southerly along said westerly line of Ninth Avenue seventy-five feet, thence at right angles westerly one hundred and twenty feet, thence at right angles northerly seventy-five feet and thence at right angles easterly one hundred and twenty feet, to the point of commencement.

The same being portions of Outside Land Block Number One Hundred and Ninety. [44]

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises hereby conveyed, or intended so to be, together with the appurtenances unto the said party of the second part, *its* successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part to these presents has hereunto set his hand and seal the day and year first above written.

B. P. OLIVER, (Seal)

Commissioner.

Signed, sealed and delivered in the presence of

State of California,

City and County of San Francisco,—ss.

On this 18th day of July in the year one thousand nine hundred and four, before me, Mathew Brady, a Notary Public in and for the said city and county residing therein, duly commissioned and sworn, personally appeared B. P. Oilver, the within-named commissioner, as in the annexed instrument stated, known to me to be the person described in and whose *named* is subscribed to the within instrument, and he acknowledged that he executed the same as such commissioner.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

[Seal]

MATHEW BRADY,

Notary Public in and for the City and County of San Francisco, State of California.

A true copy of original recorded at the request of Daniel Suter, July 18, 1904, at 40 min. past 3 P. M.

[45]

EDMUND GODCHAUX,

County Recorder.

No. E. 1390. Fee, \$2.10. Fol. 16.

State of California,

City and County of San Francisco,—ss.

I Edmond Godchaux, County Recorder of the said city and county, do hereby certify that the annexed is a whole, true and correct copy of an original record, as will appear by reference to Book 2068, of

Deeds, page 218, now in my office, and that said copy has been compared with the original, and is a correct transcript therefrom.

Witness my hand and officeial seal the 27th day of June, A. D. 1914.

[Seal] EDMOND GODCHAUX,
Recorder in and for the City and County of San Francisco.

Per Geo. M. Schiller,
Deputy.

[Endorsed]: Filed Aug. 16, 1915. Walter B. Mal-
ing, Clerk. [46]

[Answer in **Suter vs. Krueger in Superior Court.**]
(Received Aug. 22, 1913. Edward C. Harrison.)

*In the Superior Court of the State of California,
in and for the City of San Francisco.*

Department 8.

ANSWER TO THE COMPLAINT OF SOPHIE
SUTER OF SAN FRANCISCO, EXECUTRIX
OF THE WILL OF DANIEL SUTER OF SAN
FRANCISCO, EDWARD AND MAURICE
HARRISON, ATTORNEYS.

No. 50,766, Ejection Suit.

August Ferdinand Krueger (Kruger),

Also, Aug. Ferd. Krueger, Administrator of the
Estate in State, Defendant.

August Ferdinand Krueger, in behalf of himself
and Title. And: In lawful possession of the prop-
erty described in Plaintiff's Summons of August 5th.
1913, in Block 190, Outside Lands, and numbered

(new numbers) 2, 3, 4, 23, 24, and 31. Six parcels or lots.

Declares herewith his right and demand for a legal account of the estate's indebtedness to Sophie Suter in plea and says, that he is, and always was a lawful holder of the land since its purchase in the years 1880-1881, from J. J. O'Brien and Howard Havens. That his, August Krueger's, principal interest consists in the remainder and the reimbursements for the alimentation of one Anna Maria Krueger, his mother, from Zurich, Switzerland, since her arrival in San Francisco in December, 1872 (Swiss Hotel, H. Sturzenegger) (on Commercial Street), entrusted to his care during her natural life, which ended in May, 1902, at the age of 91 years.

And claims that he is rightfully entitled to the proceeds by public sale after deducting the amount of the various small [47] loans, composing the note of \$1,950.00 to the Hibernia Bank, given on November 30, 1897, and of \$1,850.00 indebtedness to Daniel Suter of December 1st, 1897, in Second Mortgage Notes, Renewal.

August F. Krueger states under oath that no notice or parley with him personally has ever been had about the proceedings during and after judgment obtained in May, 1903, and when Daniel Suter, who paid the Hibernia Bank's claim, or \$2,224.10 (final account) in July, 1903, by his own free action, according to defendant's knowledge and belief, it barred defendant in getting the terms of redemption, for with his first (The Hibernia Bank's) and second mortgage tax bills, Daniel Suter enjoyed see-

ing his name appear in the Printed Block Books of this city, which are in every real estate agent's office.

That his first letter to defendant within ten years was on March 27th, 1913, and did in no way allude to the matter contained in the above suit No. 50,766, August 5th, 1913, in the Superior Court.

AUGUST FERDINAND KRUEGER,

Defendant.

San Francisco, August 21, 1913.

Subscribed and sworn to before me this 21st August, 1913.

[Seal]

J. J. KERRIGAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 21, 1913. H. I. Mulcrevy, Clerk. By W. R. Castagnetto, Deputy Clerk.
[48]

State of California,
City and County of San Francisco.—ss.

I, H. I. Mulcrevy, County Clerk, at the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court, in and for said city and county.

HEREBY CERTIFY, the foregoing to be a full, true and correct copy of the original answer in the above-entitled cause, filed in my office on the 21st day of August, A. D. 1913.

ATTEST my hand and seal of said court this 6th day of August, A. D. 1915.

[Seal]

H. I. MULCREVY,

Clerk.

By H. Brunner,

Deputy Clerk.

[Documentary Stamp.]

[Endorsed]: Filed Aug. 16, 1915. Walter B. Maling, Clerk. [49]

[Order Granting Motions to Dismiss as to E. C. Harrison and M. E. Harrison and Denying the Motions of the Other Defendants.]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias*), as
Administrator,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff etc., et al.,

Defendants.

M. H. FARRAR, Esq., and WARNER TEMPLE, Esq., Attorneys for Plaintiff.

EDWARD C. HARRISON, Esq., and MAURICE E. HARRISON, Esq., Appearing in Person.

Ordered that of the various motions to dismiss herein, the motion of Edward C. Harrison and Maurice E. Harrison be granted, and the motions

of the other defendants be denied.

August 19th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Aug. 19, 1915. W. B. Maling,
Clerk. J. A. Schaertzer, Deputy Clerk. [50]

*In the District Court of the United States, Northern
District of California, Second Division.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias* KRUE-
GER), as Administrator, etc.,
Plaintiff,

vs.

FREDERICK EGGERS, Sheriff etc., SOPHIE
SUTER, Executrix etc., et al.,
Defendants.

**Counter-Affidavit in Reply to Affidavit of Edward
C. Harrison.**

City and County of San Francisco,
State of California,—ss.

Warner Temple, being first sworn, says:

I am a duly admitted attorney and counsellor at
law, practicing my profession in said City and
County of San Francisco now and for 20 years last
past, and upwards.

2.

I first became acquainted with the above-named
plaintiff in the month of May, A. D. 1904, when he
called at my office and asked me to help him redeem

the property hereinafter described, which, he said, had been sold under a decree of foreclosure of mortgage by his deceased mother executed in favor of the Hibernia Savings & Loan Society, a corporation; and hereinafter for brevity's sake, referred to as the "Hibernia Bank." Thereupon, I searched the papers on file in the action #82,815 by said Hibernia Bank, against John Farnham, as administrator of said Anna Maria Krueger, alias Kruger, deceased, the said Daniel Suter and one Gamage, the said Daniel Suter being a second mortgagee and Gamage being a lien holder for a street assessment claim; [51] and I inspected and read all the documents then on file in said action in the county clerk's office and the judgment-roll. The said John Farnham at that time was public administrator and as such, without notice to this plaintiff, he had applied for and obtained letters of administration on the estate of the said Anna Maria Krueger, deceased, the owner of the mortgaged property, being the real estate hereinafter particularly described, and to which estate the said property then belonged, has ever since belonged and still belongs. From that search I found, and so told this plaintiff, as the fact was and is, that the said judgment of foreclosure (which bore date 10th June, 1903) was void for want of jurisdiction in the Court to make it and for defects apparent on the face of the judgment-roll itself; that there was no proof of service of the summons and complaint on the defendant John Farnham, nor any admission of service thereof either by him or by any one for him; nor was there any appearance in

said action by him or by any one for him; that the said Decree of foreclosure recited, amongst other things, that at the trial of said action, an answer by said John Farnham was read, and there was no answer by him, nor had any answer by said John Farnham, administrator, been filed in said foreclosure action at this time, about the end of May, A. D. 1904, when I inspected said papers on file in said foreclosure action, it being then upwards of ten months since the making and entering of said foreclosure decree, thereafter, without delay, on due petition to said Superior Court, in proceedings No. 27,450 (Probate), Department #9, this plaintiff was appointed administrator of the said estate of his said deceased mother, in the place and stead of the said John Farnham. [52]

3.

Immediately thereafter, in or about the month of May or early in the month of June, A. D. 1904, this plaintiff was substituted as defendant instead of said Farnham, and on behalf of this plaintiff I moved the said Superior Court in said action #82,815 to set aside the said foreclosure decree as void for want of jurisdiction and for defects apparent on the face of said judgment-roll in said action, and notice of said motion was duly served by me personally on both Messrs. Tobin & Tobin, as the attorneys of said Hibernia Bank, and on the said Daniel Suter. (Said Daniel Suter had filed an answer with cross-complaint alleging that certain moneys were due to him as 2d mortgagee and had the decree of foreclosure include his claim to be

enforced by sale also under said foreclosure Decree; but there was no proof of service or any admission of service of said answer and cross-complaint on the said John Farnham, administrator, or at all.) The said Daniel Suter alone appeared and opposed said motion; he was accompanied by Frank McGowan, who acted as atty. for the public administrator. The said Daniel Suter asked the Court for leave to file "*nunc pro tunc*" a document called an answer to the complaint in said foreclosure action, which was a mere general denial by John Farnham, unverified, and over my objection the Court, Hon. J. G. B. Hebbard, Judge, gave leave to file said answer "*nunc pro tunc*," as of the date of the trial and to be taken as the answer read in said foreclosure decree, I excepted to such ruling. The said Daniel Suter then opposed and the said Court denied my said motion to vacate said foreclosure judgment; to which decision I also excepted; and when the order was served and filed I gave notice of appeal therefrom. From what transpired in Court at the hearing of said motion to vacate it was shown that the reason why no answer had been filed by John [53] Farnham when he was the administrator of said deceased, and the defendant in said action, was because he refused to pay the county clerk's fee for filing the answer, as there was no money in the estate of said deceased Anna Maria Krueger.

4.

Thereafter, to support the said appeal from said order refusing to vacate said foreclosure decree I prepared and served a full bill of exceptions *setting*

on Messrs. Tobin & Tobin and the said Daniel Suter. Tobin & Tobin took no notice thereof; the said Daniel Suter suggested certain revisions, and the fair copy of said Bill of Exceptions including said revisions was finally appointed by the said J. C. B. Hebbard, J., to be settled by him on or about the 5th day of September, A. D. 1905. The said Daniel Suter and I attended the appointment; no one appeared on behalf of the Hibernia Bank; their legal representative told me they would take no part in it as the bank's debt had been fully paid. The said Judge carefully read the said Bill of Exceptions and then refused to sign it saying "it was useless to appeal—the foreclosure judgment must be vacated as he evidently had had no jurisdiction to make the decree; and in the presence of said Daniel Suter the said Judge directed me to move next day in his courtroom to set aside said decree; I did so, and moved that said judgment be set aside for want of jurisdiction to make it and for defects apparent on the judgment-roll itself. The said Daniel Suter was present and opposed. He also asked said judge to grant him a writ of possession. The said Judge denied said Suter's motion for writ of possession; and he granted said motion by me, and he made his order vacating said foreclosure decree for want of jurisdiction and for defects apparent on the judgment-roll. I drew up the said order, including the denial of the writ of possession, and served said [54] order on both Messrs. Tobin & Tobin and the said Daniel Suter, who gave admissions of service thereof by indorsement on said order; and I then

filed said order; and thereafter the county clerk as ex-officio clerk of said Superior Court, cancelled the said judgment on the judgment-roll by a note thereon of said order vacating it and said cancellation was also entered in the judgment book of said Superior Court in the volume in which the original foreclosure decree had been recorded; and said cancellation of said decree became thus part of the record in said action of #82,815.

5.

Thereafter, I requested said Tobin & Tobin to formally serve this plaintiff with copy of the original complaint in said action #82,815 and I offered to accept service of the summons and complaint but they declined to take any further steps on behalf of said bank because the said bank was no longer interested, having been paid. Nothing further transpired until after the great conflagration in April, A. D. 1906, which destroyed nearly all the public records in the City and County of San Francisco.

6.

Unfortunately the said conflagration destroyed the record herein of said action #82,815; and all my papers, books, office furniture and everything connected with the affairs of the said Anna Maria Krueger, deceased, and with reference to said estate were utterly destroyed. As soon as possible after that catastrophe I saw Mr. G. A. Clough, of the firm of Tobin & Tobin, and asked him to have restored the record in said action #82,815; he refused, as the said Hibernia Bank was no longer interested, having

been paid in full their claim against said estate of Anna Maria Krueger, deceased. I also saw the said Daniel Suter and asked him to [55] restore the record, so that I might on behalf of this plaintiff have the pleadings completed and the action properly tried and disposed of. He refused. I repeated these requests later on and in the month of November, 1808, I again pressed both Messrs. Tobin & Tobin and the said Daniel Suter to take steps to restore said record, both again refused; Krueger, i. e., this plaintiff, was too poor and impecunious to do so. During all this period this plaintiff remained in the undisturbed possession of said land of which the description is as follows:

“All those pieces or parcels of land situate, lying and being in the City and County of San Francisco, State of California;

First: -Commencing at a point on the southerly line of Clement Street, distant thereon 32 feet 6 inches from the westerly line of 9th Avenue, running thence westerly along said southerly line of Clement Street 25 feet, thence at right angles southerly 100 feet, thence at right angles easterly 25 feet; and thence at right angles northerly 100 feet to the point of commencement.

2d: Commencing at a point on the easterly line of 10th Avenue distant thereon 100 feet southerly from the southerly line of Clement Street running thence southerly along said easterly line of 10th Avenue 50 feet; thence at right angles easterly 120 feet; thence at right angles northerly 50 feet; and thence at right angles westerly 120 feet to the point

of commencement.

3d: Commencing at a point on the westerly line of 9th Avenue distant thereon 100 feet southerly from the southerly line of Clement Street, running thence southerly along said westerly line of 9th Avenue 75 feet; thence at right angles westerly 120 feet, thence at right angles northerly 75 feet; and thence at right angles easterly 120 feet to the point of commencement:

Being parts of Outside Land Block #190:

Together with the improvements thereon.

Said improvements consisted of two frame dwellings—in part of which this plaintiff resided and still resided—and same are distinguished as #311–315 Ninth Avenue, Richmond District, San Francisco.

7.

It was at my suggestion and for the purpose of preventing any person from taking a conveyance of said property except through and with the approval of the Court of Probate in proceedings #27,450 aforesaid that this plaintiff filed in the county recorder's [56] office, San Francisco, a Notice of Ownership; the said Daniel was alive then, residing and practicing in San Francisco, which he did continuously till he died in San Francisco on or about the 5th day of June, 1913.

8.

The said Daniel Suter, a lawyer and money-lender, was at all the times herein-named practicing before the San Francisco bar; he was well versed in the law of real property and land titles in California; he was constantly investing money on mortgages

of real estate in San Francisco, and was familiar with the laws relating to mortgages and foreclosures, and rights thereunder, that during all the times herein mentioned, and to the present time, this plaintiff has been peacefully residing on said property undisputed and undisturbed until the defendant Sophie Suter as executrix of the late Daniel Suter, her deceased husband, brought the said action in ejectment in the plaintiff's bill herein mentioned; but, at no time did the said Daniel Suter attempt, by any proceedings, in any way, to obtain possession of said real property, or try to oust this plaintiff individually or in his representative capacity as administrator, from the possession of said real property; furthermore, in the month of January, 1910, the said Daniel Suter wrote me a letter offering to buy the plaintiff's interest in said property for the sum of \$1750.00; I submitted this offer to plaintiff and he refused to entertain it.

9.

As the attorney for this plaintiff I had no information or knowledge of the delivery by the commissioner under said foreclosure decree of any deed by him to said Daniel Suter; and if he did execute and deliver any conveyance purporting to vest in said Daniel Suter title to said real estate it can be of no effect to [57] transfer the legal title, as the said Daniel Suter took the deed with full knowledge of the aforesaid motion to set aside the said foreclosure decree afterwards held void and after the said Court had denied the motion of said Daniel Suter for a writ of possession of said property.

Neither he nor anyone claiming under him, the said Sophie Suter, his executrix, nor anyone representing her, can be an innocent purchaser.

10.

In or about the year 1911 the said plaintiff herein caused to confer with me; he was, he told me, barely earning a living, and he did not wish to incur any expense for legal aid or advice.

11.

Referring to the action #50,760 in the Superior Court by said defendant Sophie Suter, as executrix, against this plaintiff, as an individual, I deny that said Krueger was or is either insane or incompetent—he is 65 years of age and has always managed his own affairs and business shrewdly; I assert that it is the fact that there is no *judg*—either of incompetency or insanity against this plaintiff; that it was not shown by any competent or expert testimony that this plaintiff was incompetent; nor was there any evidence to prove this plaintiff an incompetent person. I further say that the said Otto tum Suden, defendant herein, was suggested to the Court to be guardian *ad litem* for said Krueger by the defendants, Sophie Suter and Edward E. Harrison, her attorney; that nothing in the petition for appointment of guardian *ad litem* shows Otto tum Suden to be financially responsible; that the said Krueger did not need a guardian *ad litem* to defend him in said ejectment action, but only an honest attorney who would in good faith use his best endeavors properly to protect the rights and [58] interests of said Krueger; that said Krueger has ever since the said great conflagration been

in need of ready money; that when said action in ejectment was brought against him he was without means to employ counsel to defend him and that he sought the aid of the Court for legal aid.

12.

I knew nothing about the ejectment action *action* #50,760 by the present defendant Sophie Suter against the said A. F. Krueger, until a day or two before the trial on or about the 9th December, 1913; when the defendant Otto tum Suden called on me for information regarding the estate aforesaid and this plaintiff's interest therein; and the said O. tum Suden stated that Judge Sturtevant had appointed him to protect this plaintiff; I gave to said tum Suden the information that I had of my own knowledge regarding it and he served me with a subpoena and I testified at the trial at said date, viz., about 9th December, 1913, and testified in substance and effect set forth, in the preceding 5 pages of this affidavit; I deny, as alleged by defendant Edward C. Harrison on page 6, that the void foreclosure decree recited an appearance. I said it set forth that an answer had been filed by the aforesaid Farnham, but that no answer was on file. About 2 or 3 weeks, I think, thereafter, I read in "The Recorder" newspaper that said ejectment action was dismissed and defendant Sophie Suter ordered to pay this plaintiff's costs; I never knew anything about the so-called new or 2d trial, nor was I asked to testify thereat.

13.

By searching the proceedings in said action

#50,760 subsequent to said trial in December, 1913, I find that the judgment in this plaintiff's favor was set aside by consent; and that the reversal of said judgment ordered and instead thereof the judgment given and made for defendant Sophie Suter and against this plaintiff [59] was by consent of tum Suden by prearrangement with the defendant Sophie Suter and Edward C. Harrison, illegally as I understand the law to be, and without any just cause apparent, save for the opportunity of giving the said tum Suden by way of bribe, as it appears to me in the shape of a fee, the sum of \$250.00 and the surrender to said Sophie Suter for \$1,500.00 property worth upwards of \$18,000.00 and always increasing in value.

Referring further to pages 6 and 7 of the said affidavit by defendant Harrison I deny that I ever testified in said ejectment action that I had on behalf of this plaintiff appealed from the judgment in said foreclosure action #82,815; I did say that I served notice of appeal from Judge Hebbard's order refusing (in the first instance) to vacate and declare void said judgment. I never knew this plaintiff till several months after the time to appeal from said judgment had passed, and then he came to request help to redeem the property from the Hibernia Bank; I also deny that said G. A. Clough testified as in said Harrison's said affidavit is stated. I am informed, believe and therefore allege that it is the fact, before rendering judgment in or about December, 1913, in said ejectment action #50,760, that Judge Sturtevant required the testimony to be written up and

transcribed; and I crave leave to refer to said transcript when produced in confirmation of my statements and this denial.

13.

It is not true that this plaintiff has not paid the taxes on said property since the date of said foreclosure decree. He has on several occasions since then, even after said conflagration of April, 1905, shown me receipts for taxes paid by him as [60] administrator thereof. The said property has never been distributed and is still subject to the jurisdiction of said Court in Probate; and the estate is still liable for the expenses of administration, the funeral expenses of said Anna Maria Krueger, deceased; also for the commissions payable to the administrator and to me as his attorney under section 1616, 1618 and 1619 of the Code of Civil Procedure, which are a first claim against said estate by the law of this State. Said commissions alone, calculated on the present worth (\$18,000.00 at least) of said estate, amount to \$1,340.00 without adding what the said Probate Court may think proper to allow for extra services under sec. 1619 C. C. P., not a cent whereof has been paid though due and owing.

14.

Referring to page 8 et seq. of said Harrison's said affidavit my memory is that the total of the judgment costs and interest ordered to be raised was \$5,250.00 not \$5,550.00: the other figures there are but estimates for interest long barred and other payments also barred by statute; that the payments alleged to have been made are and were purely vol-

untary payments which are either barred by statute or which the defendant Sophie Suter is not entitled to claim.

15.

I further say that the purported copies of papers, orders, etc., set out at the end of said affidavit and covering 5 pages relating to proceedings subsequent to the illegal judgment in favor of said Sophie Suter in said ejectment action #50,760 are but a small part of all the papers in said action on file and of record therein; and I respectfully submit that an inspection by this Hon. Court of said record will show that the original and only valid judgment therein dismissed said action and ordered said Sophie Suter to pay this plaintiff's costs; that all subsequent proceedings therein were uncontested consent proceedings, illegally, [61] wrongfully and fraudulently obtained and consented to by the defendant Otto tum Suden in conspiracy with the defendants Sophie Suter and Edward C. Harrison to betray this plaintiff and defraud him of the said property; and that if any sale and purchase were desired honestly it is not the province of a guardian *ad litem* to do it; that any money payable to a defendant defending by a guardian *ad litem* should be paid into court to the credit of said defendant; that wrongfully and in fraud of this plaintiff said Otto tum Suden instead of protecting his ward has ruined him, so that he, Otto tum Suden, might pocket a fee of \$250.00 and that he has shown the worst instead of the utmost good faith in defending his ward.

16.

I have known the plaintiff herein for ten years

and upwards last past, having frequent conversations with him not only in business, but socially, and I say that at no time have I found him incompetent to attend to his business or his property, or insane, or otherwise unfit to take care of himself or property. He is well versed in reading, is expert in his business as a wood-engraver, knows the value of money and of real property; he has an equitable mind, is always willing to do what is just and right, he pays his way, defrauds no one, and does not try or wish to take from others what is not his own; that if plaintiff's manner is at all to be questioned it is because, perhaps, of his manner, which may at times be thought peculiar or eccentric; he is a foreigner of German-Swiss parents, having always lived with an elderly mother until her death at the age of 90 years and upwards, as I have understood, and not associating with his neighbors, but by keeping to himself. His chief difficulty is and has been want of money either to prosecute or defend his rights; as his trade of wood-engraving has been ruined by the photo-engraving process [62] of illustration. He cannot get regular employment, he is now 65 years of age, and he can only earn a precarious living, barely sufficient to buy his daily food, by taking odd jobs, at piece-work rates, which are low; and many days there is no work for him. He has decidedly shown his mental capacity and competency to take care of his property and interests by refusing to accept the pittance of \$1,250.00 instead of what the Probate Court will distribute to him as the heir of his mother, the said Anna Maria Krueger, deceased.

WARNER TEMPLE.

Subscribed and sworn this 14th day of August,
A. D. 1915, before me.

[Seal] MARTIN ARONSOHN,
Notary Public in and for said City and County of
San Francisco.

(Received copy of this affidavit 16 Aug., 1915.
Edward C. Harrison, Maurice E. Harrison, Attys.
for Defts. Suter and Harrison.)

[Endorsed]: Filed Aug. 16, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [63]

**[Order Granting Application for Injunction
Pendente Lite.]**

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias*), as
Administrator, etc.,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff, etc., et al.,

Defendants.

M. H. FARRAR, Esq., and WARNER TEM-
PLE, Esq., Attorneys for Plaintiff,

EDWARD C. HARRISON, Esq., and MAU-
RICE E. HARRISON, Esq., Appearing in
Person.

The application of plaintiff for an injunction
pendente lite having been, upon due notice to the

defendants herein, argued and submitted to the Court, it is ordered that said application be granted, and that defendants be restrained as prayed for in the bill, until the trial and final determination of the cause.

M. T. DOOLING,
Judge.

August 19th, 1915.

[Endorsed]: Filed Aug. 19, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [64]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

NO. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER, (*alias* KRUEGER), as Administrator of the Estate of ANNA MARIA KRUEGER (*alias* KRUEGER), Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and County of San Francisco, California; SOPHIE SUTER; SOPHIE SUTER, as Executrix of the Will of DANIEL SUTER, Deceased; and OTTO TUM SUDEN,

Defendants.

**Statement of the Evidence on Appeal from Order
and Interlocutory Decree Granting Injunction.**

Plaintiff's application for an injunction *pendente*

lite, and the order to show cause on such application, came regularly on for hearing on the 9th day of August, 1915, before the above-named Court, Messrs. Mercer H. Farrar and Warner Temple appearing for the plaintiff, and Messrs. Edward C. Harrison and Maurice E. Harrison appearing for the defendants, whereupon the said application and order to show cause were continued to the 16th day of August, 1915. On the said 16th day of August, 1915, the said application and order to show cause again came on for hearing, Messrs. Mercer H. Farrar and Warner Temple appearing as attorneys for the plaintiff, and Messrs. Edward C. Harrison and Maurice E. Harrison appearing as attorneys for the defendants.

The said application for an injunction *pendente lite* was opposed by said attorneys for the defendants, and the following evidence was thereupon adduced and admitted on said hearing:

There was admitted in evidence of the plaintiff the Bill of Complaint. [65]

There was admitted in evidence for the defendants the affidavit of Edward C. Harrison in Response to Order to Show Cause.

There was also admitted in evidence for the defendants, certified copies of the following papers and filed in a certain action in the Superior Court of the State of California, in and for the City and County of San Francisco, entitled "Sophie Suter, as Executrix of the Will of Daniel Suter, Deceased, Plaintiff, versus August F. Krueger, Defendant." Said papers and files in said action, so introduced in evidence, were as follows:

1. Notice of Motion, signed by Arthur Crane.
2. Affidavit of August F. Krueger, Defendant.
3. Affidavit of L. H. Moise.

Said papers so introduced in evidence were in the words as set forth in the affidavit of Edward C. Harrison in response to Order to Show Cause.

There was admitted in evidence for the defendants, a certified copy of a minute order, dated August 17, 1914, in said action in said Superior Court, which minute order is in the words set forth in the affidavit of Edward C. Harrison in response to Order to Show Cause.

There was admitted in evidence for the defendants the certified copy of the answer of the defendant, August F. Krueger, in said action in said Superior Court, entitled "Answer to Ejectment Suit."

There was admitted in evidence for the defendants the certified copy of the deed from B. P. Oliver as commissioner to Daniel Suter, dated July 18, 1904.

There was admitted in evidence for the defendants certain portions of the Bill of Complaint and Amended Bill of Complaint in an action brought by the plaintiff in this action, August F. [66] Krueger as administrator of the estate of Anna Maria Krueger, deceased, against the defendants in this action, in the District Court of the Northern District of California, and numbered 131 in Equity on the files of said last-named court. The said action number 131 in equity was brought to secure the same relief as sought in this action. The said Bill of Complaint was signed and verified by the plaintiff in this action; and the said Amended Bill of Complaint

was signed and verified by Warner Temple, as attorney for said plaintiff in this action.

The following are the parts of said Bill of Complaint in action No. 131 in Equity which were admitted in evidence for the defendants:

**[Bill of Complaint in Action No. 131 in Equity
(Part of).]**

“That the defendant Otto tum Suden was on October 2d, 1913, in form appointed guardian *ad litem* for the defendant in that certain action then pending therein, entitled ‘Sophie Suter, etc., vs. August Krueger, No. 50,766’; that as your orator is advised and alleges, said guardianship *ad litem* became and so was at an end as hereinafter set forth, but your orator alleges that said Otto tum Suden still claims to be and pretends to act as guardian *ad litem* of said defendant in said action.”

“That on or about August 10, 1913, a certain act of the legislature of California amending section 372 of the Code of Civil Procedure of said State, by its terms came into force and effect. Said section as so amended is in words and figures as follows, to wit:

‘When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian *ad litem* appointed by the court in which the action is pending, in each case. A guardian *ad litem* may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to represent the infant, insane, or incompetent person

in the action or proceeding, notwithstanding he may have a general guardian and may [67] have appeared by him.

The general guardian or guardian *ad litem* so appearing for any infant, or insane or incompetent person in any suit shall have power to compromise the same and to agree to the judgment to be entered therein for or against his ward, subject to the approval of the court in which such suit is pending.

“That plaintiff in said Superior Court action thereon applied to said Court to appoint a guardian *ad litem* under said section, for the defendant therein, and said court as aforesaid made an order purporting to appoint said Otto tum Suden guardian *ad litem* of said August F. Krueger, defendant in said action, on the ground of “Incompetency.”

(After referring to the compromise between the guardian *ad litem* and Sophie Suter, as executrix): “Thereon, without the knowledge or consent of your orator and assuming to set under said section 372 of the Code of Civil Procedure, said arrangement was made and approved by said Superior Court and said money received by said Otto tum Suden.”

The following are the parts of the Amended Bill of Complaint in action No. 131 in Equity which were admitted in evidence for the defendants:

[Amended Bill of Complaint in Action No. 131, in Equity (Part of).]

“In or about the month of November, A. D. 1897, there was due to said Daniel Suter, principal, on the

following promissory notes of your complainant's mother, merely:

1894 March 28 for \$250.00 at 8% per annum;

1894 Aug. 28 for \$200.00 at 9% per annum;

1896 Jan. 22 for \$300.00 at 9% per annum;

1896 Jan. 28 for \$300.00 at 9% per annum;

1896 Aug. 28 for \$250.00 at 9% per annum;

1896 Aug. 21 for \$300.00 at 8% per annum;

thus making a total of principal claimed as *due them* to the said Daniel Suter amounting to \$1,600.00.

On this amount the said Daniel Suter claimed the further sum of \$250.00 as due to him from your complainant's said mother, for principal; interest, [68] searching title, attorney's fees and costs amounting to \$250.00 more; and on this latter sum your said complainant's mother paid interest to the said Daniel Suter up to at least the 1st October, 1898, as receipts in your complainant's possession will clearly show; and your complainant craves leave to refer to said receipts when produced."

"To the best recollection, research, information and belief of your complainant, the said Daniel Suter, claimed to be a creditor against the estate of said deceased in respect of the promissory notes signed by said deceased on 20 November, 1897, and December 1st, 1907, for \$950.00 and \$900.00, respectively, on which he claimed that 96 months' arrears of interest at 10½ per cent per annum were due to him in addition to said principal sums."

"And on or about May 20th, A. D. 1903, trial of said foreclosure action was heard by Hon. J. C. B. Hebbard; and findings and decree were on or about

said date duly filed, and by said decree then given and made by said Judge it recited, *inter alia*, that said John Farnham had appeared and filed his answer in said action, whereas in truth and in fact as it subsequently was shown to said court and Judge, as hereinafter set forth, no answer by said John Farnham as such administrator as aforesaid or at all was filed because he refused to pay the requisite fee to the county clerk required by law on filing his answer in said action, because there was no money in said estate to pay a fee to anyone.

There was admitted in evidence for the defendants the duly certified reporter's transcript of the testimony taken at the trial of the action of "Sophie Suter, as Executrix, etc., Plaintiff, vs. August F. Krueger, Defendant."

The following is a summary of the proceedings taken and [69] the evidence adduced before the said Superior Court, at the said last-mentioned trial, as shown by said transcript of testimony:

[Summary of Proceedings and Evidence Before Superior Court.]

"The cause of Sophie Suter, as Executrix of the Will of Daniel Suter, deceased, versus August F. Krueger, came on for trial before the Superior Court of the State of California, in and for the City and County of San Francisco, on December 9, 1913, Edward C. Harrison appearing for said plaintiff therein, Sophie Suter, as executrix, and Otto tum Suden, Esq., appearing for himself as guardian *ad litem* of the defendant therein, August F. Krueger, and for said defendant August F. Krueger. The

said defendant therein, August F. Krueger, was also present.

“The plaintiff Sophie Suter, as executrix, offered, and there was admitted, in evidence the deed from B. P. Oliver, as commissioner, to Daniel Suter, dated July 18, 1904, which was offered in evidence in the hearing of the order to show cause in this cause. Plaintiff, Sophie Suter, as executrix, also offered, and there was admitted, in evidence two deeds from August F. Krueger to Anna Maria Krueger, conveying the property described in the bill of complaint in this cause, and executed by August F. Krueger. August F. Krueger was thereupon called as a witness for the plaintiff Sophie Suter, as executrix, but upon the objection of his guardian *ad litem*, Otto tum Suden, that he was incompetent to testify, he was examined by the Court as to competency, and held incompetent, and withdrawn as a witness.

“Plaintiff Sophie Suter, as executrix, thereupon rested.

“Warner Temple was sworn and testified as a witness for the defendant August F. Krueger in substance as follows:

“I am an attorney at law and have been for more than eighteen years in this city. I have known the defendant August F. Krueger for many years last past. I have been his attorney [70] since before the great fire of 1906. An action was brought by the Hibernia Savings and Loan Society to foreclose a mortgage against his deceased mother. The suit was brought against Mr. Farnham, as administrator of the decedent, and Daniel Suter was made a co-

defendant as second mortgagee. Mr. Krueger came to me and asked me if I would prepare an appeal; only five or six weeks remained with which to appeal from the judgment of foreclosure. Letters of Administration were thereupon issued to Mr. Krueger in the estate of Anna Maria Krueger, deceased, on May 20, 1904. I then applied to Judge Hebbard for leave to substitute Mr. Krueger as administrator in the place of Mr. Farnham. The order was made. When I became the attorney of Mr. Krueger and he had become a party to the action, I examined the record and I am pretty familiar with that record. There was in that record a complaint by the bank against Mr. Farnham, as administrator of the estate of Anna Maria Krueger, deceased. Also Mr. Suter was made a party defendant, on the ground of being a second mortgagee and there was a third party, a defendant who claimed to have a lien for some street or other work done. There *were* no pleading there on behalf of Mr. Farnham.

“Q. (by Mr. tum SUDEN.) Do you recollect whether or not any return of summons was made?

“A. That was one of the things missing.

“Q. Was there, or not?

“A. No, sir, there was no proper return.

“Q. What was there in the return of summons?

“A. This was the condition; the register would seem to show that some affidavit of service of summons had been made, and there was nothing in the papers to show it. [71]

“Q. Then there was no return?

“A. No, sir—There was some sort of affidavit.

What the affidavit was, I could not tell, because it was not there.”

“Q. Was the original summons on file?

“A. No, sir.

“Q. Was there any return of summons on file?

“A. No, sir, I don’t think there was.

“Q. Was there any answer on file on behalf of Mr. Farnham?

“A. None whatever. There was nothing whatever, either in the register or otherwise to show there was an answer.

“Continuing the same witness further testified substantially as follows: A judgment and decree was made; it recited the amount due to the bank and to Mr. Daniel Suter and it also recited that Mr. Farnham had appeared by counsel and filed an Answer. There was no answer on file. I then moved to set aside the decree, on the ground of defects apparent on the face of it, and for want of jurisdiction in the court to make the decree. I made this motion immediately after the appointment of Mr. Krueger as administrator. The decree recited, among other things, that Mr. Farnham had appeared and answered, and he never did—that was an oversight. Afterward, Mr. Suter came in and asked for liberty to file an answer for Mr. Farnham, *nunc pro tunc*, and he appeared in court for Mr McGowan, who used to be the attorney for Mr. Farnham, as public administrator, and tendered Judge Hebbard an unverified answer of general denial to a verified complaint, and asked that he be allowed to file it *nunc pro tunc*, and read as the answer in the decree

which I was objecting to. Over my objection, Judge Hebbard made the order, *nunc pro tunc*. As that was an order made after judgment, it was an appealable order and within the time limited by the code, I perfected an appeal on behalf [72] of Mr. Krueger against that order and prepared a bill of exceptions, and that bill of exceptions I served on Mr. Suter and on Mr. Clough about August, 1905, and after Judge Hebbard returned from his vacation, an appointment to settle the bill of exceptions was made. I had purposely seen Mr. Clough, and he told me the bank had been paid by Mr. Suter, and he took no further interest in it, and he didn't appear on the settlement of the bill of exceptions. Mr. Suter appeared, and at the same time, on September 5, 1905, the Court was asked to settle the bill of exceptions, Mr. Suter interjected a motion for leave, or for the Court to grant a writ of possession to take the property. The judge said he would read the bill of exceptions first. After reading the bill of exceptions, he said 'Mr. Suter, it is evident that there was a great miscarriage of justice here, and that I have been misled by the decree that was prepared. Mr. Farnham never appeared in the action and there never was any answer filed. We can't go before the Supreme Court with a thing like this. I shall allow the thing to be set aside, and grant a motion for a new trial.'

"Q. Was Mr. Suter present when the order was made? A. Yes, sir, certainly.

"Q. What was said at that time in the presence of Mr. Suter?

“A. When the Judge said he was satisfied that, as Mr. Farnham had not filed any answer, and we produced to the court the reason he had not filed any answer, there were no assets in the estate and Mr. Farnham would not put up the fee to file the answer, and the county clerk would not file the answer when he was not paid his fee, so there never was any answer filed. So the Judge said ‘It is evident that I was misled,’ everything was [73] regular, but that he had signed the decree apparently without reading it carefully, but on reading the bill of exceptions he said ‘I am perfectly satisfied that I had no jurisdiction to make the decree, and, if you will renew your motion, Mr. Temple, to vacate the decree, I will grant it.’ Accordingly I did renew my motion to set aside the decree and the Judge granted my motion to set aside the decree and refused Mr. Suter’s motion for a writ of possession.

“WITNESS.—I prepared the order and the Judge signed it.

“Q. What did Mr. Suter say to this?

“A. Mr. Suter was present when I renewed the motion before Judge Hebbard and Judge Hebbard made the order, and Mr. Suter never appealed from it.

“On cross-examination the same witness testified in substance:

“Nearly a year, a year all *of* but six weeks, had expired after the judgment in the foreclosure suit before Mr. Krueger came to me. The judgment was rendered on or about June 16, 1903. Mr. Krueger first called on me a few days before May 14, 1904,

when I got the letters of administration. I could not make out from Mr. Krueger what were the facts and I said 'Come back to-morrow and meanwhile I will go out to the county clerk's office and search.' and I carefully read over the whole proceedings in the case of Hibernia Savings and Loan Society against Farnham, administrator of the estate of Anna Maria Krueger, deceased. In those proceedings Mr. Oliver was appointed a commissioner. He had given Mr. Suter a certificate of sale and his report of the sale was on file with the judgment-roll and it showed that Mr. Suter had paid the bank. It showed that he paid the commissioner [74] the price for the property, and bought it for \$5,000 and some odd dollars.

"Q. When you looked at the register, I think you said you saw there was a paper filed of the service of the summons?

"A. Yes, sir, that was against a man who had some interest as a lienholder for sewer work, or something of that sort.

"Q. Did you look at the affidavit itself?

"A. Well, I wanted to see the affidavit, and I could not find it. The register showed that the summons was returned with an affidavit of service, but I was not able to find the affidavit, so I don't know what it contained with reference to the service actually made, I read the decree of foreclosure among the papers and it recited that the action came regularly on for trial upon the complaint of the plaintiff and the answer of the defendant Farnham as administrator of the estate of Anna Maria Krueger, and that the defend-

ant Farnham appeared by his attorneys. It recited the appearance of counsel for defendant Farnham on the trial, to the best of my recollection. I first made my motion to vacate the judgment the same day I got Mr. Krueger appointed administrator of his mother's estate, or the next day. I first had him substituted as defendant in the case. I then filed a motion of appeal from the judgment, and gave \$300 bond. I made the motion to vacate the judgment before I served the notice of appeal. In my moving papers I stated the ground of the motion to be for defects apparent on the face of the decree, because it recited that Mr. Farnham appeared and filed his answer, and there was no answer filed. That was the ground of my motion. First of all, when I came around, the Judge granted it. Then Mr. Suter came the next day and asked the Judge to set aside the [75] order granting it, he stating by affidavit that he was living at Sausalito, and he had been delayed by the fog. He said his steamer could not bring him across in time to reach the court, so he asked the order setting aside the decree and the motion reheard. Then the Judge made the order, and the motion was reheard, and then when it was reheard, Mr. Suter, appeared, and Mr. McGowan came with him, and brought an unverified answer by Farnham as administrator, simply a general denial of the complaint, and asked that it be served *nunc pro tunc*, and I objected to that and Judge Hebbard, over my objection, made the order, and I appealed from that order. I can't recollect whether Mr. McGowan told me that they had served the answer or not, but as a

matter of fact they had not filed it. That was on May, 14, 1904, about eleven months after the decree.

“Defendant thereupon rested.

“Plaintiff Sophie Suter, as executrix, thereupon called George A. Clough, who was duly sworn and testified substantially as follows: I am and have been for many years an attorney at law practicing in San Francisco, and one of the attorneys and counsel for the Hibernia Savings & Loan Society. In the year 1902, I instituted an action of foreclosure on behalf of the Hibernia Savings & Loan Society against the estate of Anna Maria Krueger, deceased, on her mortgage to the bank. The record of that action has been destroyed. I do not recall who the defendants were in that action other than the estate of Anna Maria Krueger and I think Mr. Farnham was the administrator. I have no independent recollection as to whether or not the summons was served in that action. I have an office record of it which I have consulted. It is my impression that the record shows that the summons was returned and filed. I was personally present at [76] the trial of that action. Mr. Farnham's attorneys in that action were McGowan & Westlake, I think. Mr. McGowan and Mr. Westlake participated. They served me with an answer on behalf of the defendant Farnham as administrator in the case. On the trial of the action my recollection is that Mr. McGowan and Mr. Westlake were both there appearing on behalf of the defendant Farnham as administrator, and that Mr. McGowan conducted the trial. There was a trial

there. The best of my recollection is that the decree recited the appearance of Mr. McGowan and Mr. Westlake as attorneys for the defendant Farnham. That is our practice. I don't have any independent recollection of the fact in that case but that would be my testimony from the best of my recollection, but I do remember the fact that Mr. McGowan was there and I think Mr. Westlake. We have a printed form of decree which has the blanks prepared for these recitals, showing the pleadings that were filed on behalf of the defendants and the name or names of counsel that appeared. That is, a blank is left in the printed form for the name of counsel.

“On cross-examination, the said witness, George A. Clough, testified substantially as follows: I haven't any recollection as to whether the answer was served on me.

“Q. What I want to know is, what you personally know about it. Mr. Clough, you did not receive any answer, as far as you know?

“A. I didn't receive it—the best of my recollection will be this: I will testify that I examined the answer, a copy of the answer, as among our office files.

“Q. Is it not the fact that the judgment went *pro forma* by default, substantially?

“A. It seems more or less like a situation—I haven't any [77] independent recollection, but it may have been brought about by something else, but very frequently they are just general denials.

“Q. In other words, those things go as a matter of form?

“A. Usually, although it very frequently happens that people do—

“Q. (Interruptingly.) You have a set form of decree which you simply fill out, which recites whether or not an answer has been filed, and you assume that the answer had been actually filed?

“A. No, sir, I don’t assume anything of the kind.

“Q. What do you go on?

“A. At the time I assumed that—

“Q. Yes—

“A. Yes, sir, at the time; that is the only explanation of the recitals in the decree. It was never brought to our attention until some months later, when Mr. Temple appeared in the case, that no answer had been filed. Of course, Mr. McGowan and Mr. Westlake having appeared at the trial, and it having been served upon us, we prepared our decree upon the assumption that it had been filed.

“I do not know what the answer contained, by way of defense. I examined the answer, a copy of the answer, as among our office files. At the time the decree was prepared I assumed that the answer had been filed. It was never brought to our attention until some months later, when Mr. Temple appeared in the case, that no answer had been filed. Of course, Mr. McGowan and Mr. Westlake having appeared on the trial, and it having been served upon us, we prepared our decree upon the assumption that [78] it had been filed. Mr. Suter purchased at the sale. I have a clear recollection as to the appearance of Mr. McGowan in the case. There were some questions asked by him, more particularly with reference to Mr. Suter’s mortgage. I don’t think there was any question made as to the amount due

upon our mortgage, and I don't remember that there was any contest of that at all, but I think there were some *question* asked, or some little trial of a few minutes, and I think concerning Mr. Suter's second mortgage. This was a very unusual case, for the reason that Mr. Krueger appeared at our office very frequently, and made very long visits, and the matter was impressed upon my mind more than usual by reason of that fact, and by reason of the fact that within probably a year and a half after the foreclosure, Mr. Temple appeared in the case and endeavored to get the decree set aside, and served upon us very voluminous records in the case, all of which served to carry along in my mind the facts of the case.

"Plaintiff Sophie Suter, as executrix, thereupon rested and the cause was argued and submitted to the Court."

There was admitted in evidence for the plaintiff in reply the affidavit of Warner Temple in reply to affidavit of Edward C. Harrison.

Plaintiff thereupon offered in evidence, and there *was* received in evidence, the following papers and files in the said action of "Sophie Suter, as executrix, vs. August F. Krueger":

1. A petition of guardian *ad litem*, filed in said last mentioned cause July 22, 1914, and which is as follows:

THE COURT OF CHANCERY,
COUNTY OF ALBANY, NEW YORK.

**[Petition of Guardian Ad Litem in Suter v. Krueger
in Superior Court.]**

“(Title of Court and Cause.)

To the Honorable Superior Court of the City and
County of San Francisco, State of California.

The petition of Otto tum Suden, guardian *ad litem* of the [79] defendant August F. Krueger respectfully represents:

1.

That judgment in favor of the plaintiff herein as prayed for has heretofore been duly given, made and entered in the above-entitled action;

2.

That your petitioner is the guardian *ad litem* of the defendant August F. Krueger herein, duly appointed by order of this Court; that said defendant Krueger is without means with which to carry on an appeal in the said action or to further defend or prosecute the same;

3.

That Sophie Suter the plaintiff herein has offered to the defendant herein and has deposited with this petitioner as guardian *ad litem*, the sum of Fifteen Hundred Dollars (\$1,500.00) gold coin of the United States, for a waiver of all errors and of the right to appeal from the judgment made and entered therein, in her favor; that this petitioner respectfully suggests that it is for the best interest of the defendant Krueger that said offer be accepted, and that he be authorized by this Court to waive all errors and right of appeal on the behalf of defendant Krueger

herein for the reason as above stated, that said Krueger is wholly without means with which to make an appeal, or to bear the expense thereof, and that he has no means of raising the necessary funds for that purpose; that the amount required therefor would be not less than the sum of Two Hundred and Fifty Dollars (\$250) and that this petitioner knows of no way or method of obtaining said sum for said Krueger, and that he does not feel justified in advancing said sum for said Krueger there being no assurance whatever that the appeal would be successful, or defendant would [80] ultimately prevail in the case;

That for these reasons the undersigned petitioner respectfully submits that it is advisable and for the best interest of defendant herein that the offer of said plaintiff Sophie Suter be accepted, and that he be authorized to execute such waiver of errors and all right of appeal.

WHEREFORE your petitioner prays that an order be made authorizing this petitioner for and on behalf of the said defendant herein and as his guardian *ad litem* to execute such waiver of appeal and of errors, or that such further and other order be made as to this Court may seem fit and proper.

Respectfully submitted,

OTTO tum SUDEN,

Guardian *ad litem*."

2. An order to compromise, filed July 22, 1914, which is as follows:

“(Title of Court and Cause.)

Order to Compromise [in Superior Court].

Otto tum Suden, the duly appointed, qualified and acting guardian *ad litem* of the defendant August F. Krueger in the above-entitled action having filed herein his petition praying for authority to compromise and settle the controversy herein for and in consideration of the sum of Fifteen Hundred Dollars (\$1500.00) to be paid by the plaintiff to the defendant upon the condition that defendant waive error and right of appeal therein;

AND IT NOW APPEARING to the Court that all the allegations of the petition of said guardian *ad litem* are true, and that it is for the best interest of the defendant that said offer of compromise be accepted. [81]

NOW THEREFORE it is by the Court ordered and adjudged that the said Otta tum Suden guardian *ad litem* be and he is hereby authorized to accept said offer of compromise and to execute a waiver of error and right of appeal herein upon the payment to him of the sum of Fifteen Hundred Dollars (\$1500.00) by the plaintiff in this action.

Dated July 22, 1914.

GEO A. STURTEVANT.

Judge of the Superior Court.”

3. An order, filed July 24, 1914, which is as follows:

[Order of Superior Court Allowing Guardian Ad Litem Compensation, etc.]

“(Title of Court and Cause.)

IT APPEARING HEREIN That the plaintiff in the above-entitled cause has paid to Otto tum Suden, Guardian *ad litem* of the defendant in the above-entitled cause, the sum of Fifteen Hundred Dollars (\$1500.00) for waiver of error and of right of appeal, and in compromise and settlement of the controversy involved in this action pursuant to order of this Court; that the said guardian now has and holds the said sum of Fifteen Hundred Dollars (\$1,500.00);

AND IT FURTHER APPEARING that the said guardian *ad litem* is entitled to a reasonable compensation for his services rendered in the above-entitled action; that the sum of Two Hundred and Fifty Dollars (\$250) is a reasonable sum to be allowed for such compensation;

NOW THEREFORE it is by this Court ordered that the said guardian *ad litem* due paid unto himself the said sum of Two Hundred and Fifty Dollars (\$250) as and for his compensation for his services rendered, and that he pay the remainder of said sum, to wit: The sum of Twelve Hundred and Fifty Dollars (\$250) unto [82] the defendant herein by depositing the same in the German Savings and Loan Society's Bank to the credit of the said August F. Krueger and subject to his order.

Dated July 24th, 1914.

GEO. A. STURTEVANT,
Judge of the Superior Court.

Recorded Book 72, page 453, July 24th, 1914.”

4. A Release of Errors and Waiver of Appeal, filed July 24, 1914, which is as follows:

“(Title of Court and Cause.)

**Release of Errors and Waiver of Appeal [in
Supreme Court].**

In consideration of the sum of Fifteen Hundred Dollars (\$1,500.00) paid by the above-named plaintiff to the undersigned guardian *ad litem* of the above-named defendant, under and pursuant to the order of compromise duly made herein by the above-named Court on the 22d day of July, A. D. 1914, the said defendant, and his said guardian *ad litem* do hereby waive appeal, and the right of appeal, from the order heretofore made herein granting said plaintiff's motion for a new trial of the above-entitled action and from the judgment heretofore rendered and entered in her favor, and against said defendant in said action; and hereby release any and all errors that may have occurred or been committed herein, in favor of said plaintiff and waive a new trial of said action, and all right to move therefor by reason of any such errors or otherwise.

San Francisco, Calif., July 23d, 1914.

AUGUST F. KREUGER,

By Otto tum Suden,

His Guardian *ad litem*.”

5. An affidavit of Otto tum Suden, filed August 7, 1914, [83] which is as follows:

[Affidavit of Otto tum Suden in Superior Court.]

“(Title of Court and Cause.)

State of California,

City and County of San Francisco,—ss.

Otto tum Suden, duly sworn, deposes: That sometime in the month of September, 1913, Mr. E. C. Harrison, plaintiff's attorney, inquired of affiant whether or not he would consent to act as an attorney *ad litem* in an action he had brought against a German living in the Richmond District to recover possession of certain real estate; that he had summons served on the defendant; that the defendant was in default and that he was justified in entering judgment, but that he had learned that the defendant *not competent*, and he did not want to do him an injustice inasmuch as he did not know whether or not he had some defense;

Thereafter in October, 1913, an order of this Court was served on affiant appointing him guardian *ad litem* of the defendant in this action, together with a copy of the complaint filed herein; that affiant called upon Mr. Harrison and was told by him that this was the case concerning which he had the conversation above detailed; affiant inspected the records and found that defendant was in default and that Mr. Harrison could have taken such default and have obtained judgment all regular and valid on its face; that thereafter he undertook an investigation of the facts of the case and visited the said Kreuger at his place of residence on Ninth Avenue near Clement Street. He found him living in an odd collection of

sheds, shacks and crazy-quilt house divided in many compartments evidently intended for rooms, but all of them unfinished and in a considerable state of dilapidation, the whole giving an impression of a superstructure of a wrecked ferry boat, the structure evidently being designed without [84] any plan and bearing every evidence of the vagary of the mind of its occupant. Affiant spent nearly the whole of a Sunday with defendant in an attempt to learn the facts of the case. Defendant is a German and so is affiant, and being able to talk his native language he finally succeeded in calming down the defendant who seemed excited and excitable when his mind was directed to the subject matter of this action and the proceeding actions out of which it grew. In the end defendant submitted to affiant such documents as he had relating to the matter in hand, all of which had been cut in places and pasted into one or more books at different pages so that it was very difficult to piece them out and get their contents. From this conversation and from the documents so submitted, affiant gathered that originally the Hibernia Savings and Loan Society had made a loan to defendant's mother, that thereafter Daniel Suter, deceased, had made a second loan all prior to 1904, this loan also being not made to defendant but to his mother who died prior to 1905, over whose estate he is administrator so far as can be learned, the records not having been restored. The interest on either of these mortgages does not seem to have been kept up, nor were any taxes paid, nor the various street assessments upon two of which judgment had been entered and the

property sold nearly a year prior to October, 1913, for amounts aggregating about Twelve Hundred Dollars (\$1,200.00), and from which sales redemption must be immediately made.

Mr. Suter in addition seems to have advanced various sums of money for the purpose of carrying the property along so that from all that affiant could gather the total indebtedness upon the property arising out of these mortgages, streets assessments, taxes and other advances would be close to Thirteen Thousand [85] Dollars (\$13,000).

It appears further that prior to 1905, the Hibernia Savings and Loan Society brought an action to foreclose its mortgage impleading Daniel Suter as second mortgagee. In that action judgment was made decreeing a foreclosure and a sale was had in due time and a commissioner's deed was issued. And it was to recover possession under this deed that the present action instituted by Mr. Harrison was brought. Pursuing his investigation further affiant found that according to the statement of Warner Temple, as attorney at law who had represented the defendant, there was a defect in the judgment of foreclosure in that it recited that defendant therein had filed an answer, whereas in truth and fact no answer had been filed, nor had his default been taken or entered, so that the question presented was whether or not plaintiff in this case could establish the validity of his deed by a proper judgment-roll, the burden of proving lack of such a roll, however, being on defendant and not on plaintiff, affiant however thinking that he might be of some service to

the defendant here who to him appeared absolutely incompetent to transact any business undertook the defense and on the trial of the case succeeded in defeating plaintiff's right of present possession because of the invalidity of the judgment-roll upon which the sale depended. The expenses of this trial in the way of witness fees were defrayed by affiant, the defendant being apparently wholly without means. On this trial the defendant was sworn as a witness. He was questioned by affiant as well as Mr. Harrison and the Court and from the answers which he gave and his conduct then and there on the witness-stand, the Court ruled that he was not a competent witness, and he was not permitted to testify for that reason.

Thereafter in due time plaintiff moved for a new trial and [86] prepared his bill of exceptions which is in all respects full, fair and correct, and then made the proposition to affiant that plaintiff was willing to pay to defendant herein a reasonable sum in full settlement and liquidation if affiant on behalf of defendant would consent to a new trial and judgment in favor of plaintiff and an waiver of appeal and error, all to be subject to the approval of the Court; that affiant found himself confronted with litigation, the further conduct of which would entail considerable expense and the outcome of which was exceedingly doubtful, for the present action involved only the present right of possession and did not determine the actual merits, so that even if defendant prevailed on the appeal, plaintiff would still be entitled to proceed in the matter of the ad-

ministration of Anna Krueger's estate by presentation of her claim, no notice to creditors having apparently been published, and by foreclosure of both mortgages or a recovery of all other moneys advanced in protecting the property.

It was further evident that defendant would not be permitted to act as administrator, his incompetency being patent so that this affiant did not under the circumstances feel justified to advance the necessary funds to continue this litigation and defendant had none to advance.

It appeared further upon an examination of the bill of exceptions that plaintiff's learned counsel had overlooked a most material and substantial point in the trial before this Court, the facts concerning which were fully covered by the evidence which was that the order of Judge Hebbard purporting to vacate the judgment of foreclosure was made after the appeal from the judgment of foreclosure had been perfected, thereby removing the case and the judgment from the control of the Court. [87]

If this point is good, and affiant believed it so to be, then the judgment of this Court in favor of defendant of course was erroneous and plaintiff would be entitled to possession and all the right of defendant in that event either individually or as administrator would have been at an end. Therefore affiant believed it to be decidedly to the advantage of defendant to obtain a compromise and settlement. After numerous consultations and various negotiations he obtained an offer of Fifteen Hundred Dollars (\$1,500.00). This offer he submitted to Mr. Kreuger

in the vain hope that some glimmer of reason would enable him to see its advantage, but said Kreuger absolutely failed to comprehend or understand the situation, his mind being able apparently to conceive and hold but one idea and that was that neither courts or the law nor anyone could take his land, he having so read in some old law book which affiant is informed he has been thumbing for years, which is printed in German, and which seems to expound law or hypothecae of ancient days. Thereupon affiant submitted the offer so made by Mr. Harrison to the Court with full explanation of the circumstances. In doing so a computation was made of the amount of debt resting upon the property and to which in any event in equity plaintiff herein would be entitled, and also the value of the property. It should not be overlooked that the plaintiff in this case prior to the trial thereof in order to preserve her rights was compelled to redeem his property from judicial sales in foreclosure of street assessments liens, and that she disbursed a sum exceeding Twelve Hundred Dollars (\$1,200.00) for that purpose as affiant is informed. Thus affiant calculated that the total amount of indebtedness was about Thirteen Thousand Five Hundred Dollars (\$13,500) and over. Affiant further made careful inquiries as to the value of [88] the property and found that its actual present market value did not exceed Sixteen Thousand Dollars, and that that amount could be obtained only if a buyer could be found willing to take it. That if it were forced upon the market Fourteen Thousand to Fifteen Thousand Dollars would be a big price, other

lots in the same block being offered from Eighteen Hundred and Fifty Dollars to Nineteen Hundred Dollars for a twenty-five foot frontage. The offer of plaintiff therefore was substantially the difference between its actual value and the amount due on it.

Affiant further desires to say that in all his negotiations with plaintiff and her attorney, he found her inclined to be fair, just and equitable and to deal with the defendant in a spirit of justice, and that under these circumstances affiant met her in the same spirit, and does not believe that it was incumbent upon him to ask for more than defendant was justly entitled to.

Thereafter upon petition to this Court an order was duly given and made permitting the compromise which was carried out and the money was paid to affiant and has been held by him ever since to be paid over to said Krueger pursuant to the order of the Court and as in the order specified. That affiant has notified said Krueger and has urged him to come with him to the German Savings and Loan Society to deposit the money; that he has failed to comply with the said request of affiant;

Affiant further avers that in his opinion said defendant is mentally incompetent verging on insanity; that he is unable to reason or to speak connectedly; that he rambles and seems to be in a constant daze; that he will answer no question directly and that the only way to get any information out of him is to get him to talk and let him go on talking;

Affiant further avers that the matter of fee has been never discussed with said Krueger, nor has this affiant stated that he did not expect a fee. It is true however that affiant did not expect to be as successful as he was;

Affiant further avers that said Krueger is not competent to make the affidavit he did in this matter in which he speaks of examining the records, and that he would have examined the records if he had not believed that the guardianship was at an end, for the reason that said Krueger whenever he has been served with summons in this action or any other action, as well as in the street assessments foreclosure actions, invariably allowed the judgments to go by default and paid no attention to summons or other citation under the fixed notion that the law and the courts could not take his property, it being so laid down in the old law book on which he pins his faith.

Similarly the allegation in defendant's affidavit that he is now and at all times since the year 1903, has been ready, able and willing to pay all claims and demands on said land, etc., is without any basis of fact, since said defendant is utterly without means and without money and has been so for many years past. The statement so made in said affidavit purporting to be defendant's statement is simply the language of the scrivener of said affidavit and is conclusive evidence of the lack of competence of said defendant and must have been made with full knowledge of its untruth on the part of the person who prepared said affidavit and caused said Krueger to sign it;

This affiant further avers that the defendant is by profession a wood engraver and is competent at his profession; that for a number of years last past he has been without steady employment; that at times he has worked for the Moise-Klinkner Company [90] at odd jobs and at other times for the Louis Roesch Company, a corporation of which affiant is a director and attorney; that the latter corporation employs said Krueger on piece work whenever wood engraving work is required, the demand for which at present is very small; that he has been so employed for the Louis Roesch Company numerous times during the last year, and therefore the affidavit of L. H. Moise that for fifteen years defendant was employed in a position requiring good common sense and ability, etc., if intended to mean that defendant has had a position and has been steadily employed by Moise-Klinkner Company is not true. His employment with said corporation has been at a small wage whenever any wood engraving work was required, said corporation taking advantage of said defendant's necessities in that respect.

This affiant further avers that the persons with whom said defendant comes in contact with the Louis Roesch Company, consider him mentally defective and dangerous, so much so that on August 5, 1914, and before this affiant had become aware of the employment of Arthur Crane, Esq., a Mr. Wilhelm, G. F. Heise, the accountant of the Louis Roesch Company called upon this affiant at his office and cautioned him to beware of said Krueger; that he was a dangerous man and liable to commit acts of violence,

absolutely not amenable to reason and that he labored under the impression that everybody was engaged in a conspiracy against him.

Affiant further avers that he is well acquainted with said Krueger and has had numerous occasions to observe him and his conduct; that in his opinion said Krueger is incompetent to transact business, to take care of his affairs, or to enter into any contract or engagement, that he is liable to be imposed upon by designing persons, and he lacks understanding and is irresponsible [91] and that he has been so ever since the commencement of this action.

OTTO tum SUDEN.

Subscribed and sworn to before me this 6th day of August, 1914.

[Seal]

CHARLES R. HOLTON,

Notary Public in and for the City and County of San Francisco, State of California.”

“6. That in the Superior Court action, in the City and County of San Francisco, Numbered 50,766, entitled, Sophie Suter as Executrix, etc. vs. August F. Krueger,—the judgment shows a complaint in ejectment, and the answer of defendant August F. Krueger, and the answer and amended answer of Otto tum Suden, as guardian *ad litem* of August F. Krueger; and findings of fact and conclusions of law in favor of said defendant, August F. Krueger, that Daniel Suter was not at, or prior to his death, the owner in fee simple or entitled to the possession of the land described in the said complaint, and that August F. Krueger is in the possession of said land and entitled to the possession

thereof, and that defendant does not unlawfully withhold or detain possession thereof from plaintiff; and, further, that defendant, August F. Krueger's claims and right to possession of said lot of land, are not without right or foundation, and said defendant, August F. Krueger, is entitled to the possession thereof; and a judgment in favor of defendant August F. Krueger for his costs was made and entered on March 4, 1914, in Judgment Book 50, page 210; that there is endorsed thereon the following, 'Plaintiff's motion for new trial granted. H. I. Mulcrevy, Clerk. By P. R. McMahon, D. C. C.'; and the certificate to such judgment-roll is dated March 4, 1914; also, in said judgment-roll, further findings of fact and conclusions of law in favor of the plaintiff [92] and against the defendant to the effect that said Daniel Suter was at and prior to the time of his death the owner in fee simple of, and title to the possession of, all said land, and that ever since his death the same has belonged to and constituted a part of his estate, and that said plaintiff was at the time of the commencement of the action, and still is, entitled to the possession thereof, on which findings a judgment and decree is made in favor of the plaintiff and against the defendant, August F. Krueger, for the recovery of the possession of the real property described in the complaint, which judgment is dated July 15, 1914, and is entered on July 15, 1914, in Judgment Book 72, at page 379, and the certificate to such judgment-roll is dated July 16, 1914."

The foregoing was all of the testimony introduced at the hearing of said application for a temporary

injunction and order to show cause.

The said application and order to show cause was thereupon submitted to the Court, and thereafter, on the 19th day of August, 1915, the said court made its order and interlocutory decree granting injunction *pendente lite*; to which order defendants excepted and do except.

[Order Settling Statement of Evidence.]

The foregoing is settled as a statement of the evidence on appeal from said last-mentioned order and interlocutory decree.

Dated October 20, A. D. 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 20, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [93]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias* KRUEGER), as Administrator of the Estate of ANNA MARIA KRUEGER (*alias* KRUEGER), Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and County of San Francisco, California,

SOPHIE SUTER, SOPHIE SUTER, as
Executrix of the Will of DANIEL SUTER,
Deceased; and OTTO tum SUDEN,
Defendants.

Petition for Allowance of Appeal.

To the Honorable MAURICE T. DOOLING, Dis-
trict Judge, and Judge of the Above-named
Court:

Frederick Eggers, Sheriff of the City and County
of San Francisco, California, Sophie Suter, Sophie
Suter, as executrix of the will of Daniel Suter, de-
ceased, and Otto tum Suden, the defendants in the
above-entitled cause, being aggrieved by the order
and interlocutory decree granting an injunction,
rendered and entered in the above-entitled cause on
the 19th day of August, A. D. 1915, do hereby appeal
from said order and interlocutory decree to the Cir-
cuit Court of Appeals for the Ninth Circuit, for the
reasons set forth in the assignment of errors filed
herewith; and they pray that their appeal be allowed
and that citation be issued *and* provided by law, and
that a transcript of the record, proceedings and
documents, upon which said order and interlocutory
decree was based, duly authenticated, be sent to the
United States Circuit Court of Appeals for the
Ninth Circuit, under the rules of such court in such
cases made and [94] provded.

Your petitioners further pray that the proper
order be made relating to the required security to be
required of them.

Dated September 16, A. D. 1915.

EDWARD C. HARRISON,

MAURICE E. HARRISON,

Solicitors for Defendants Frederick Eggers, Sheriff of the City and County of San Francisco, California, Sophie Suter, and Sophie Suter, as Executrix of the Will of Daniel Suter, Deceased.

PETER tum SUDEN,

Solicitor for Defendant Otto tum Suden.

[Order Allowing Appeal.]

Appeal allowed upon giving bond as required by law in the sum of \$300.00.

Dated September 16, A. D. 1915.

M. T. DOOLING,

District Judge.

[Endorsed]: Filed September 16, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[95]

In the District Court of the United States, for the Northern District of California, Northern Division.

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias* KRUEGER), as Administrator of the Estate of ANNA MARIA KRUEGER (*alias* KRUEGER), Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and County of San Francisco, California;

SOPHIE SUTER, SOPHIE SUTER, as Executrix of the Will of DANIEL SUTER, Deceased; and OTTO TUM SUDEN,

Assignment of Errors.

Now comes Frederick Eggers, Sheriff of the City and County of San Francisco, California, Sophie Suter, Sophie Suter, as executrix of the will of Daniel Suter, deceased, and Otto tum Suden, the defendants in the above-entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal in the above-entitled cause, from the order and interlocutory decree made by this Honorable Court granting an injunction, on the 19th day of August, 1915.

I.

That the United States District Court for the Northern District of California, and Honorable M. T. Dooling, Judge thereof, erred in making the said order and interlocutory decree granting an injunction, inasmuch as the bill of complaint in this cause is without equity.

II.

That the said Court and Judge erred in making the said order and interlocutory decree, because the said injunction stays proceedings on the execution of a judgment of the Superior [96] Court of the State of California, in violation of the provisions of section 265 of the Judicial Code.

III.

That the said Court and Judge erred in making the said order and interlocutory decree, because the defendant, Sophie Suter, as executrix of the will of

Daniel Suter, deceased, instituted as plaintiff in the Superior Court of the State of California, in and for the Cty and County of San Francisco, an action against the plaintiff herein, for the recovery of the possession of, and the quieting of her title to, all the property described in the bill of complaint herein, and said plaintiff herein never presented or filed any petition or application for the removal of said cause to the said District Court, but submitted himself to, and accepted the jurisdiction of said Superior Court, which jurisdiction effectually attached to said property, to the exclusion of the jurisdiction of the said District Court; in which action a judgment has been rendered against said plaintiff herein and in favor of said defendant, Sophie Suter as such executrix, which judgment has never been vacated, reversed or modified, or appealed from, and is now final.

IV.

That the said Court and Judge erred in making said order and interlocutory decree, because in said action in said Superior Court, an order was duly made, after notice to said plaintiff herein, and after an opportunity given to him to be heard, adjudging and decreeing that said plaintiff herein was incompetent, and appointing a guardian *ad litem* of said plaintiff herein; and because said order adjudging said plaintiff herein incompetent, and appointing a guardian *ad litem*, was in all respects valid and binding upon plaintiff herein, and prevents [97] him from now complaining that he was or is competent, or that the judgment rendered in said action in said Superior Court is in any respect invalid.

V.

That the said Court and Judge erred in making said order and interlocutory decree, because in said action in said Superior Court, after the rendition of judgment therein in favor of Sophie Suter, one of the defendants herein, said plaintiff in this cause appeared personally and by Arthur Crane, Esq., an attorney at law, and wholly separate and apart from his said guardian *ad litem*, and on August 7, 1914, made a motion for the setting aside of the orders and judgment of which he complains in this action; that said motion was duly heard and plaintiff herein offered evidence in support thereof before said Superior Court, and after full hearing and argument the said motion was denied, and that such denial of said motion is a bar to the prosecution of this action.

VI.

That the said Court and Judge erred in making said order and interlocutory decree, because the bill of complaint is without equity, in that it shows the existence of an indebtedness secured by a valid mortgage on the property therein described, which the plaintiff herein does not offer to pay, but against which he seeks to quiet his title.

VII.

That the said Court and Judge erred in making said order and interlocutory decree, because the bill of complaint is without equity, in that said plaintiff herein had a plain, speedy and adequate remedy at law by motion in said action in said Superior Court.

VIII.

That the said Court and Judge erred in making the said order and interlocutory decree, because the bill of complaint is without equity, in that it does not show that the judgment in said action in said Superior Court was obtained by fraud.

IX.

That the said Court and Judge erred in making said order and interlocutory decree, because the judgment in the action of foreclosure referred to in the bill of complaint was not void on its face, in that it recited the appearance of the defendant therein, and the order vacating said judgment in foreclosure was invalid because made during the pendency of an appeal to the Supreme Court of California from said Superior Court, and therefore the judgment rendered in the action brought by the defendant, Sophie Suter as such executrix against plaintiff herein was proper and in accordance with the rights of the parties, and said plaintiff herein will not be damaged, or deprived of any right, by the enforcement thereof.

X.

That the said Court and Judge erred in making said order and interlocutory decree, because the judgment in the said action of foreclosure was rendered by a court which had jurisdiction of the parties and the subject matter, and after service of summons and the appearance of defendant therein by the service of an answer and the actual appearance of defendant's attorneys upon the trial, and therefore the order vacating said judgment as in

excess of jurisdiction was beyond the Court's jurisdiction and therefore the judgment rendered in said action between the defendant, Sophie Suter, as executrix, and said plaintiff herein, was proper, and said plaintiff herein will not be damaged, or deprived of any right, by the enforcement thereof. [99]

XI.

That the said Court and Judge erred in making said order and interlocutory decree, because the judgment rendered in said action between said plaintiff herein individually and said defendant, Sophie Suter, is binding upon said complainant as administrator of the estate of Anna Maria Kreuger, deceased.

XII.

That the said Court and Judge erred in making said order and interlocutory decree, because any interest that may be owned by said plaintiff herein in the property described in said complaint is subject to liens in favor of this defendant exceeding in value the total value of said property.

XIII.

That the said Court and Judge erred in making the said order and interlocutory decree, in that it does not provide for the giving of security by said plaintiff herein, and is an interlocutory order of injunction, and that it therefore violates Section 18 of an Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes."

XIV.

That the said Court and Judge erred in making said order and interlocutory decree, inasmuch as the bill of complaint is without equity in this; that it is nowhere therein alleged that the plaintiff herein is the owner of the property therein described, or any part thereof, or of any interest therein, and it is nowhere therein alleged that the said property, or any part thereof, or any interest therein, belongs or did at the commencement of this action belong to the estate of Anna Maria Kreuger, deceased. [100]

XV.

That the said Court and Judge erred in making said order and interlocutory decree, inasmuch as the bill of complaint is without equity, in that it is nowhere therein alleged what is the citizenship of the defendants herein, and it does not appear therefrom whether there is any diversity of citizenship between the parties to this cause, nor whether the said District Court had or has any jurisdiction of this cause.

XVI.

That the said Court and Judge erred in making the said order and interlocutory decree, in that it does not set forth the reasons for the issuance of the same, is not specific in terms and does not describe in reasonable detail the act or acts sought to be restrained, and that it therefore violates section 19 of the said Act of Congress of October 15, 1914.

WHEREFORE the appellants pray that said order and interlocutory decree be reversed and that said District Court for the Northern District of Cali-

fornia be ordered to enter a decree reversing its decision in said cause.

EDWARD C. HARRISON,
MAURICE E. HARRISON,

Solicitors for Appellants Sophie Suter and Sophie Suter, as Executrix of the Will of Daniel Suter, Deceased, and Frederick Eggers, Sheriff of the City and County of San Francisco, California.

PETER tum SUDEN,
Solicitor for Appellant Otto tum Suden.

[Endorsed]: Filed Sep. 16, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [101]

[Bond.]

KNOW ALL MEN BY THESE PRESENTS:

That we, Sophie Suter, Sophie Suter, as executrix of the will of Daniel Suter, deceased, Otto tum Suden and Frederick Eggers, Sheriff of the City and County of San Francisco, as principals, and Edward C. Harrison and William King, as sureties, are held and firmly bound unto August Ferdinand Krueger (otherwise Kruger), as administrator of the estate of Anna Maria Krueger (otherwise Kruger), deceased, in the full and just sum of Three Hundred Dollars (\$300.00), to be paid to the said August Ferdinand Krueger, his executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of September, in the year of our Lord one thousand nine hundred and fifteen.

WHEREAS, lately at a District Court of the

United States for the Northern District of California, in a suit depending in said court, between said August Ferdinand Krueger (otherwise Kruger), as administrator of the estate of Anna Maria Krueger (otherwise Kruger), deceased, as plaintiff, and said Sophie Suter, Sophie Suter, as executor of the will of Daniel Suter, deceased, Otto tum Suden, and Frederick Eggers, Sheriff of the City and County of San Francisco, California, as defendants, an order and interlocutory decree was rendered against said defendants, and the said defendants having obtained from said Court an order allowing an appeal to reverse said order and interlocutory decree in the aforesaid suit, and a citation directed to the said plaintiff and respondent, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for [102] the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said defendants and appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

SOPHIE SUTER,

SOPHIE SUTER,

Executrix of the Will of Daniel Suter, Deceased.

OTTO tum SUDEN,

FREDERICK EGGERS,

Sheriff of the City and County of San Francisco,
California.

EDWARD C. HARRISON,

WILLIAM KING.

State of California,

City and County of San Francisco,

United States of America,

Northern District of California,—ss.

Edward C. Harrison and William King, being duly sworn, each for himself, deposes and says: That he is a freeholder in said district, and is worth the sum of Three Hundred Dollars, exclusive of property exempt from execution, and over [103] and above all debts and liabilities.

EDWARD C. HARRISON.

WILLIAM KING.

Subscribed and sworn to before me this 17th day of September, A. D. 1915.

[Seal]

ALICE SPENCER,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

On this seventeenth day of September, in the year of our Lord one thousand nine hundred and fifteen, before me, Alice Spencer, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Sophie Suter, Sophie Suter, as executrix of the will

of Daniel Suter, deceased, Otto tum Suden, Frederick Eggers, Edward C. Harrison and William King, known to me to be the persons described in, whose names are subscribed to, and who executed the within and annexed instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the said City and County of San Francisco, the day and year last above written.

[Seal] ALICE SPENCER,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires June 20th, 1919.

[Endorsed]: Form of bond and sufficiency of sureties approved. September 17th, 1915.

M. T. DOOLING,
Judge.

Filed Sep. 17, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [104]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER, (Otherwise
KRUGER), Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise
KRUGER), Deceased,

Plaintiff and Respondent,

vs.

FREDERICK EGGERS, Sheriff of the City and
County of San Francisco, California et als.,
Defendants and Appellants.

Praeipice for Transcript on Appeal.

To the Clerk of Said Court,

Sir: Please prepare transcript on appeal, incorporating the following portions of the record:

The Bill of Complaint,

Order to Show Cause and Restraining Order.

Motion of Defendant Suter to Dismiss,

Affidavit of Edward C. Harrison in Response to Order to Show Cause.

Certified Copy of Deed, B. P. Oliver, Commissioner, to Daniel Suter, dated July 18, 1904.

Certified Copy of Answer to Summons of Ejectment Suit.

Order Granting Motions to Dismiss as to E. C. Harrison and M. E. Harrison and Denying the Motions of the Other Defendants.

Counter-affidavit of W. Temple in Reply to Affidavit of Edward C. Harrison.

Order Granting Injunction *pendente lite* and restraining Defendants as Prayed for in the Bill. Petition for Allowance of Appeal and Order of Allowance of Appeal. [105]

Assignment of Errors on Appeal,

Bond on Appeal.

Citation on Appeal.

Whatever Statement on Appeal may Hereafter be Settled.

EDWARD C. HARRISON,
MAURICE E. HARRISON,

Attorneys for Defendants and Appellants Sophie Suter, Sophie Suter, Executrix of the Will of Daniel Suter, Deceased, and Frederick Eggers, Sheriff of the City and County of San Francisco, California.

PETER tum SUDEN,
Attorney for Defendant and Appelant Otto tum Suden.

Due service and receipt of a copy of the within Praeceptum for Transcript on Appeal is hereby admitted this 27th day of September, 1915.

WARNER TEMPLE,
M. H. FARRAR,
Attorneys and Solicitors for Plaintiff and Appellee August Ferdinand Krueger (otherwise Kruger) as Administrator of the Estate of Anna Maria Krueger (otherwise Kruger), Deceased.

[Endorsed]: Filed Sep. 27, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [106]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias*) KRUEGER) as Administrator of the Estate of ANNA MARIA KRUEGER (*alias* KRUEGER) Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and County of San Francisco, California; SOPHIE SUTER; SOPHIE SUTER, as Executrix of the Will of DANIEL SUTER, Deceased; and, OTTO TUM SUDEN,

Defendants.

Praeipie for Transcript on Appeal Asked by Appellee.

To the Clerk of the said District Court:

Please incorporate, in the preparation of the transcript of appeal, in the above matter, the following portions of the record:

1. The entire judgment-roll in action No. 50,766, Superior Court, San Francisco, entitled,—Sophie Suter, as Executrix, etc., vs. August F. Kreuger.

Also, the following papers, filed and of record in the said action of the Superior Court, San Francisco, numbered 50,766, and entitled, Sophie Suter, as Executrix, etc., vs. August F. Krueger, to wit:

Petition of Guardian *ad litem* (filed Jul. 22, 1914).

Order of Compromise (filed Jul. 22, 1914).

Order (filed Jul. 24, 1914).

Release of Errors and Waiver of Appeal (filed Jul. 24, 1914). [107]

Affidavit of Otto tum Suden (filed Aug. 7, 1914).

Bond of Appellee, for \$1000.00 on temporary injunction.

MERCER H. FARRAR,

WARNER TEMPLE,

Attorneys for Plaintiff. Phone Douglas 8896, Room 725 Clunie Building, 519 California St., San Francisco.

[Endorsed]: Filed Oct. 4, 1915. Walter B. Mal-
ing, Clerk. [108]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 197—IN EQUITY.

AUGUST FERDINAND KRUEGER (*alias* KRUE-
GER), as Administrator of the Estate of
ANNA MARIA KRUEGER (*alias* KRUE-
GER), Deceased,

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and
County of San Francisco, California;
SOPHIE SUTER; SOPHIE SUTER, as
Executrix of the Will of Daniel Suter, De-
ceased, and OTTO tum SUDEN,

Defendants.

Directions as to General Contents of Record on Appeal.

It appearing that a difference has arisen between the parties concerning directions as to the general contents of the record to be prepared on the appeal from the order and interlocutory decree granting injunction in the above-entitled cause, and such difference having been submitted to the undersigned judge in accordance with Rule 75 of the Rules of Practice in Equity, and it further appearing, that the papers and documents hereinafter enumerated are not portions of the record in this cause and, in so far as they are material to the said appeal, they have been set out in the statement of the evidence on such appeal this day settled and signed,

IT IS HEREBY ORDERED that the record on said appeal shall not include the following papers and documents mentioned in the praecipe of appellant:

1. The entire judgment-roll in action No. 50,766, Superior Court, San Francisco, entitled, Sophie Suter, as Executrix, etc., vs. August F. Kruger.
[109]

Also, the following papers, filed and of record in the said action of the Superior Court, San Francisco, numbered 50,766, and entitled, Sophie Suter, as Executrix, etc., vs. August F. Krueger, to wit:

Petition of Guardian *ad litem* (filed July 22, 1914).

Order of Compromise (filed July 22, 1914).

Order (filed July 24, 1914).

Release of Errors and Waiver of Appeal (filed July 24, 1914).

Affidavit of Otto tum Suden (filed Aug. 7, 1914).

Dated October 20, A. D. 1915.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Oct. 20, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [110]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 197—EQUITY.

AUGUST FERDINAND KRUEGER (Otherwise
KRUGER), as Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise
KRUGER), Deceased.

Plaintiff,

vs.

FREDERICK EGGERS, Sheriff of the City and
County of San Francisco, California; SOPHIE
SUTER, as Executrix of the Will of Daniel
Suter, Deceased; SOPHIE SUTER, OTTO
tum SUDEN, EDWARD C. HARRISON and
MAURICE E. HARRISON,

Defendants.

I, Walter B. Maling, Clerk of the District Court
of the United States, in and for the Northern Dis-
trict of California, do hereby certify the foregoing

one hundred ten (110) pages, numbered from 1 to 110, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, in conformity with the praecipes for record on appeal and the directions as to general contents of record on appeal filed herein, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$64.40; that said amount was paid by Harrison & Harrison, Esqrs., solicitors for defendants Sophie Suter, as executrix of the will of Daniel Suter, deceased, and Sophie Suter; that the original Citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of November, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

[Ten Cent Internal Revenue Stamp. Canceled
Nov. 16, 1915. W. B. M.] [111]

[Citation on Appeal (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to August Ferdinand Krueger (otherwise Kruger), Administrator of the Estate of Anna Maria Krueger (Otherwise Kruger), Deceased, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Frederick Eggers, Sheriff of the City and County of San Francisco, California, Sophie Suter, Sophie Suter, as Executrix of the Will of Daniel Suter, deceased, and Otto tum Suden are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 17th day of September, A. D. 1915.

M. T. DOOLING,
United States District Judge. [112]

Receipt of a copy of the within citation on appeal, on this 18th day of September, A. D. 1915, is hereby admitted, with all rights of appellee reserved.

MERCER H. FARRAR,
WARNER TEMPLE,

Attorneys and Solicitors for Appellee, August Ferdinand Krueger (Otherwise Kruger), Administrator of the Estate of Anna Maria Krueger (Otherwise Kruger), Deceased.

[Endorsed]: No. 197—In Equity. United States District Court for the Northern District of Califor-

nia. Frederick Eggers, Sheriff, etc., et al., Appellants, vs. August Ferdinand Krueger, alias, Admr., Appellee. Citation on Appeal. Filed Sep. 20, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

FREDERICK EGGERS, Sheriff of the City and
County of San Francisco, California; SOPHIE
SUTER, SOPHIE SUTER, as Executrix of
the Will of Daniel Suter, Deceased, and
OTTO TUM SUDEN,

Appellants,

vs.

AUGUST FERDINAND KRUEGER (Otherwise
KRUGER), as Administrator of the Estate of
ANNA MARIA KRUEGER (Otherwise
KRUGER), Deceased.

Appellee.

**Order Enlarging Time to [November 15, 1915] File
Record.**

For good cause shown, It is Hereby Ordered that Frederick Eggers, Sheriff of the City and County of San Francisco, California, Sophie Suter, Sophie Suter, as Executrix of the Will of Daniel Suter, deceased, and Otto tum Suden, the appellants in the above-entitled cause, be and they are hereby allowed thirty days from and after the 16th day of October, A. D. 1915, within which to file the record of their appeal therein and to docket the case with the clerk

of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 13, 1915.

M. T. DOOLING,
District Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. Frederick Eggers, Sheriff et al., Appellants, vs. August Ferdinand Krueger (Otherwise Kruger), Administrator, Appellee. Order Enlarging Time to File Record. Filed Oct. 13, 1915. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

FREDERICK EGGERS, Sheriff of the City and County of San Francisco, California; SOPHIE SUTER, SOPHIE SUTER, as Executrix of the Will of Daniel Suter, Deceased, and OTTO tum SUDEN,

Appellants,

vs.

AUGUST FERDINAND KRUEGER (Otherwise KRUGER), as Administrator of the Estate of ANNA MARIA KRUEGER (Otherwise KRUGER), Deceased.

Appellee.

**Order Enlarging Time to [December 16, 1915] File
Record.**

For good cause shown, it is hereby ordered that Frederick Eggers, Sheriff of the City and County of San Francisco, California, Sophie Suter, Sophie

Suter, as Executrix of the Will of Daniel Suter, deceased, and Otto tum Suden, the appellants in the above-entitled cause, be and they are hereby allowed thirty days from and after the 16th day of November, A. D. 1915, within which to file the record of their appeal therein and to docket the case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated November 10, 1915.

M. T. DOOLING,
District Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. Frederick Eggers, Sheriff et al., Appellants, vs. August Ferdinand Krueger (otherwise Kruger), Administrator, Appellee. Order Enlarging Time to File Record. Filed Nov. 10, 1915. F. D. Monckton, Clerk.

No. 2681. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to Dec. 17, 1915, to File Record Thereof and to Docket Case. Refiled Nov. 16, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. 2681. United States Circuit Court of Appeals for the Ninth Circuit. Frederick Eggers, as Sheriff of the City and County of San Francisco, California, Sophie Suter, Sophie Suter, as Executrix of the Will of Daniel Suter, Deceased, and Otto tum Suden, Appellants, vs. August Ferdinand Krueger (Otherwise Kruger), Administrator of the Estate of Anna Maria Krueger (Otherwise

Kruger), Deceased, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed November 16, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.